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ABSTRACT OF THE PROCEEDINGS

OF THE

Council of the Governor-General of India,

ASSEMBLED FOR THE PURPOSE OF MAKING

LAWS AND REGULATIONS.

1869.

WITH INDEX.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament, 24 & 25 Vic., cap. 67.

The Council met at Government House on Monday, the 4th January, 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding.*
His Excellency the Commander-in Chief, G. C. S. I., K. C. B.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpur.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.

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His Excellency the COMMANDER-IN-CHIEF presented the report of the Select Committee on the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.

OUDH TALUQDARS' BILL.

The Hon'ble MR. STRACHEY presented the report of the Select Committee on the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate the succession thereto.

IMPROVEMENT OF LAND (N. W. PROVINCES) BILL.

The Hon'ble MR. STRACHEY moved that the Bill to facilitate the improvement of land in the North-Western Provinces be referred to a Select Committee with instructions to report in a month. He said that the Council would remember that in October last the Bill was introduced in order that it might be published in the Gazette. It was then not referred to a Select Committee, it having been thought right that the opinion of the Lieutenant-Governor of

the North-Western Provinces should first be received in regard to the details of the Bill. Although, as MR STRACHEY had explained, both the Lieutenant-Governor and the High Court at Agra had come to the conclusion that legislation in these matters was necessary, and although the Lieutenant-Governor had generally stated his approval of the provisions of the Bill, the opinion of His Honour had not then been received on the whole of the actual details. The views of the Lieutenant-Governor had only lately been received by the Government of India.

MR. STRACHEY might state briefly the reasons which had rendered legislation on this subject necessary. Some time ago it was decided by the High Court at Agra that by the general law applicable to the North-Western Provinces a tenant possessing a right of occupancy was liable to ejectment from his holding if he dug a *kacha* well or planted trees without the previous consent of the landlord. As mentioned in the Statement of Objects and Reasons—

"a *kacha* well is often a mere hole in the ground, a few feet deep, made at the cost of a few rupees, and, as stated by the Board of Revenue, it is very commonly impossible without such wells to obtain any crop at all. It is clearly not reasonable that, in consequence of the performance of acts which are essential to the proper cultivation of the land, a tenant should be liable to ejectment from his holding and to forfeiture of his property."

It was plain from the judgment of the Court itself that this view of the unreasonableness of the law was held by the Court, although it felt itself bound to administer the law as it found it. Since the Bill had been introduced there had been unhappily fresh instances of the real necessity for legislation on this subject. As the Council well knew, famine now threatened a considerable portion of the North-Western Provinces, and in some parts of the country that great calamity had actually already fallen on the people. In great tracts of country, at the present moment, it might be said that almost the sole remaining hope of obtaining any crop at all at the coming harvest lay in the digging of temporary wells for irrigation. If within a short time no rain should fall, except where canal irrigation had been introduced, the digging of wells would really be the sole means in some districts of saving the people from the extremity of absolute famine; and as MR. STRACHEY knew from an eye-witness, such wells were being at the present time dug literally by thousands — he might probably say by hundreds of thousands. He might ask whether any thing could be more preposterous than this—if he thought that this state of things was going to last, he would say could anything be more wicked—that we should have such a state of the law that the digging of wells, on which it

was not too much to say that the preservation of thousands of lives might depend, should be treated as a criminal offence. The mere digging of a well might render a tenant liable to ejectment from his holding, to the practical confiscation of his property and to utter ruin, at the very time when the Government had declared it to be one of its first duties to give the means of irrigation for protection against famine, and had expended or was about to expend millions in the construction of the greatest works of irrigation ever undertaken in the world. It was now actually a penal act for a tenant or even sometimes for a proprietor of land, as would be presently shown, to dig a well for the irrigation of his fields; and it ought to be remembered that this well irrigation was of almost greater importance to the country than any irrigation we could ever hope to give from canals. When all the great works already constructed and which were contemplated by Government had been completed, and when every drop of water which could be made available from the great rivers of Northern India had been used, he believed there would only be sufficient water to irrigate one-fourth part of the cultivated area of the country: the remaining three-fourths must continue to depend on natural resources, that was to say on the rainfall and on wells.

He said just now that not only tenants but proprietors of land might incur those penal consequences if they dug wells for the irrigation of their fields; for, as everybody admitted, so-called tenants with rights of occupancy in the North-Western Provinces—and he supposed that of such tenants there must be several millions in those provinces—were in fact co-proprietors in the land with the superior landlord. He did not say anything on the question whether such tenures were economically good or bad, but every one would admit that they existed, and that they constituted actual rights of property in the soil. He did not suppose that any one would be found to assert that such rights should be liable to be swept away in consequence of the performance of acts which might be essential to the cultivation and protection of any crop at all, and the performance of which tended most powerfully and directly to save the people from perishing by famine—acts which were really not only highly beneficial to the community at large but to the superior landlords themselves. And in regard to this question, where tenants with rights of occupancy were concerned, he might observe that there could not properly arise any question as to the propriety of requiring that the tenant before digging a well should obtain the consent of the landlord, or give the landlord the option of making the improvement himself. For the right of the landlord in such a case was really confined to his right to receive rent from the tenant with right of occupancy, who was in fact a co-proprietor, and so long as

he received that rent the superior landlord had no power to interfere in any way with the land, nor indeed could he have any object in so doing The case of a tenant who held under a lease was hardly, he might say not at all, less strong. It might be argued—although MR. STRACHEY thought the argument altogether mistaken—that the tenant-at-will ought not, in the absence of any agreement on the subject, to receive compensation from his landlord for the cost of improvements made by him without the landlord's previous consent; but MR. STRACHEY wished to point out that the law as interpreted by the High Court in the North-Western Provinces went further than this. Not only did it say that the tenant could not claim compensation for improvements, but that the mere fact of making improvements such as digging a well, rendered the tenant liable to the cancellation of his lease and ejectment from his holding. MR. STRACHEY ventured to say that if that had not actually been declared by the High Court to be the law of the land, no one would believe it possible that such a law could exist in a country which had been for more than half a century under British Government. He did not think there could be much difference of opinion in regard to what he had now said. He believed there had been and would be a general agreement, at any rate up to this point, that the principle laid down in section 9 of the Bill was a proper principle, namely, that—

"no tenant shall be liable to have his lease cancelled, or to be ejected from the land in his occupation, merely on account of improvements made by him on such land."

But there were other questions with which this Bill dealt which were much more difficult. It seemed to him that while we said that a tenant should not be liable to penal consequences merely because he made improvements, it was also right to give the landlord a remedy against the tenant in case of injury to the land through bad cultivation or otherwise. With that object section 4 was introduced. It said—

"Every tenant shall cultivate and manage the land in his occupation in a good and husband-like manner, according to the custom of the country in reference to lands of a like nature, except so far as such custom is varied by this Act, so that the land shall not be injured or deteriorated, or its annual letting-value diminished."

MR. STRACHEY had said in introducing the Bill that it seemed right that as the Bill was intended to facilitate the general improvement of the land, the law which encouraged the making of improvements by tenants should also protect the landlord against injury to the land on the part of the tenant. It had, however, been objected to this provision, and in this objection His Honour the Lieutenant-Governor of the North-Western Provinces had expressed his concurrence, that such a provision was not actually required. His Honour said—

"Section 4 appears to the Lieutenant Governor unnecessary; and it might lead to complications and unnecessary litigation, while it is difficult to see that any practical advantage would accrue to proprietors from the same."

Although MR. STRACHEY thought as a matter of principle that that section was right and proper, and although he was strongly inclined to keep it in the Bill, he admitted that it might be a question whether the actual advantage to the landlord would be worth much, and he thought that was a question which would form a proper subject for consideration by the Select Committee and the Council afterwards. Again the Bill, following the Acts lately passed for Oudh and the Panjáb, proposed to allow all tenants, including tenants-at-will, to claim, under certain conditions laid down, compensation for certain improvements executed by them in the land, if the landlord should determine to eject the tenant from his holding, although such improvements might have been made without the landlord's previous consent. MR. STRACHEY had stated on more than one occasion that he had no doubt that that principle was correct. The principle was one which had not only been recognized in the Acts to which he had just referred, but which had also, as the Council would remark, been recognized as properly applicable to tenants-at-will in the Bills relating to tenures of land in Ireland which had been introduced into Parliament not only by the liberal Government, but in the last session by the Conservative Government also. It seemed to him that it was impossible that such provisions, if properly interpreted by the courts, should lead to injury to the landlord. He believed that they must necessarily prove as beneficial to the landlord as to the tenant, and that it was the duty of the Government so to frame the law as to encourage the improvement of the land. In India, and especially in Northern India, this was a duty of unusually high importance, because almost the only important works of improvement were works of irrigation, and it seemed to be folly, and worse than folly, to discourage in any way the execution of works which tended to increase the wealth and prosperity of the country, and to protect the people against the calamity of famine. Some persons, however, whose opinions were of great weight, believed that although it was proper to give the right of compensation to tenants with right of occupancy, the same benefit should not be given to mere tenants-at-will, and that view had been taken by the Lieutenant-Governor of the North-Western Provinces. In the letter lately received it was said—

"In respect of section 12, the Lieutenant-Governor concurs with the Board that the right of claiming compensation should be confined to occupancy ryots. It would not be fair to saddle the landlord with claims of the kind, unless the liability were admitted at the time of giving the lease. If the custom of long leases were prevalent, the case might be different, and

if the provision is maintained, the Lieutenant-Governor would limit it to cultivators who have held without lease, or on lease, or succession of leases for a continuous period of say not less than twelve years."

Although MR. STRACHEY could not personally concur in that view, he did not think it necessary that he should enter further into that part of the question, but thought that it was a subject which, after discussion by the Select Committee, ought to be further considered by the Council.

There were other points in the Bill which were very important, and which would require careful consideration, but he did not think it necessary to take up the time of the Council by entering at present into further detail; his only object now being to satisfy the Council that legislation was necessary, and that the present Bill might properly be referred to a Select Committee for consideration of the details which a legislative enactment on this subject ought to contain. The papers which had been received from the Government of the North-Western Provinces would of course be laid before the Council, and they would give to the Committee valuable aid in bringing the Bill to a shape which could be recommended with confidence to the Council for adoption.

The Hon'ble MR. COCKERELL said that as to the main object of this Bill for the improvement of land in the North-Western Provinces he entirely concurred in the remarks which had fallen from the Hon'ble Mover of the Bill. He went quite as far as Mr. Strachey in deprecating the maintenance of the present state of the law which admitted of what that Hon'ble Member had justly designated as the *penal* consequence of improvements made by tenants without the sanction of their landlords; and he thought Mr. Strachey was justified in assuming that the Council, generally, would admit the necessity of giving protection to tenants in the matter of improvements made by them, by not allowing them to continue, as they were at present in many cases, liable to be ejected in consequence of acts by which their landlord's property was substantially improved. MR. COCKERELL fully concurred in the opinion that in this matter the present state of the law was obstructive and opposed to sound policy, and that some remedial legislation had become absolutely necessary.

But some of the provisions of the Bill went beyond the mere protection of the tenant in his exercise of a just right. He referred to the provisions of section 12, which not only gave a claim to compensation for improvements made by a tenant having a right of occupancy, but conceded a similar privilege, in regard to improvements made by them, to tenants who had no right of occupancy. It would be said, perhaps, that the principle of the equity of such a concession had been already adopted by the legislature in the enactment of the Panjáb

Tenancy Bill. MR. COCKERELL was one of those who had doubted the expediency of what had been done in this direction; but he observed that the present Bill went farther even than the Panjáb Act. In the latter, a tenant without a right of occupancy, who had himself made some outlay in the improvement of his land, was entitled to compensation in the event of his ejectment by his landlord; but if the present Bill were to become law, such a tenant would not only be entitled to compensation for his own improvements, but also for such as had been made by his ascendant or predecessor in the occupancy of the land, and this moreover not only in the case of his ejectment by his landlord, but also when his tenancy had determined by effluxion of time. Under this rule, a lease-holder would have a claim to compensation, on the expiration of his lease, for improvements of the land held by him which had been made during that lease, although the land might have been leased to him for such a period and on such terms as to have given him a certainty of reimbursing himself in his outlay from the profits of such lease.

Such a tenant, he conceded, would have already, even by his own calculation, fully recovered the value of his disbursements, and to make provision, as this Bill would, for the further compensation of the lease-holder for his outlay, was much more than the equity of the case required.

If this Bill were proposed merely to apply to cases in which improvements had been made after the passing of the Act, MR. COCKERELL would even then think its provisions inexpedient, but he had looked through the Bill carefully and had found nothing which could make him suppose that the Mover proposed to confine its provisions to improvements effected after the passing of the Act, and therefore, as an instance of *ex post facto* legislation, he thought the Bill was, in regard to the provisions to which he had specially adverted, justly open to serious objection, and if those provisions were not modified in Committee, he certainly would feel himself bound to oppose the passing of the Bill. He thought the principle involved in the provisions to which he had objected a very important one, and therefore deemed it right to make these remarks before the Bill was referred to a Select Committee.

The Hon'ble MR. SHAW STEWART said that he had carefully studied the Bill by the light of the remarks with which the Hon'ble Mover had introduced the Bill, and of the Statement of Objects and Reasons, which he regretted to state were the only documents placed before the Council. When the Panjáb Tenancy Bill was introduced a year ago, the Council by a large majority affirmed the principle that no Bill affecting the landed interests of any large district should come up for discussion until all the documents received from the local authori-

ties were placed before the Council. No such documents in this case had been submitted to the Council, and he would therefore appeal to the Hon'ble Mr. Strachey to adjourn his motion until the letter of the Lieutenant Governor, to which he had referred, had been circulated to all the members. To a certain extent the Hon'ble Mr. Strachey had removed this objection, and had read some quotations from the letter of the Government of the North-Western Provinces, but those were not sufficient to enable MR. SHAW STEWART to estimate what was the opinion of that Government in regard to this Bill.

The Hon'ble Mr. Cockerell had anticipated much of the objections which MR. SHAW STEWART had intended to take to the Bill, and it was unnecessary for him to repeat what had been already said. It appeared to him, from what he had already seen of the measure, that it would have the effect of very unjust *ex post facto* legislation, and unless the Hon'ble Mr. Strachey was able to explain away the objections taken by the Hon'ble Mr. Cockerell, MR. SHAW STEWART was not prepared to vote in favour of the present motion.

HIS EXCELLENCY THE PRESIDENT said, he should be very sorry if the motion of this day was adjourned in consequence of what had fallen from the Hon'ble Mr. Cockerell. Whatever might be the objections which could be fairly urged against any of the clauses of this Bill, the proper time for the consideration of those objections would be in Select Committee. All that was now asked of the Council was to affirm the general principle of the Bill, namely, that it was right and wise and politic that every encouragement should be given to certain classes of the tenantry to make improvements in the land. The Hon'ble Mr. Strachey had wisely and appositely alluded to the present state of things in the North-Western Provinces as illustrative of the great advantage which would accrue by the passing of the Bill. HIS EXCELLENCY would consider it an honour to his administration if this Bill could be passed during his incumbency as Governor General. But such could not be the case; and this being so, HIS EXCELLENCY held it his duty to give, while holding his present position, such force and weight as he could to the proposition of the Hon'ble Mr. Strachey. For his own part HIS EXCELLENCY could not conceive any reasonable objection to the main principles of the Bill. If it was wise and necessary for the State to expend large sums of money in improving the productive powers of the soil, and guarding and securing the country from the ruinous consequences of droughts, did it not behove the Council to encourage individuals to do what they could in furtherance of the same object? It would take years, he might say generations, to carry out the irrigation works which were in progress or in contemplation, and that at an enormous cost; but a

great deal could be done by individuals at an inappreciable cost, mainly by labouring with their own hands.

On the question of compensation for improvements, it seemed to His Excellency that the provisions in the proposed Act carefully and reasonably guarded the interests of the landlord. In the first place the Bill proposed to provide in the second portion of section 3, that in no case should the provisions of the Act affect cases where special agreements had been made, or should be made, between landlords and tenants. That being the case, unless the lease had provided that compensation should be given for improvements, he presumed that no improvements would be made during the existence of such a lease. Again, where there was no lease, the last clause of section 12 seemed carefully to protect the landlord: the words were—

"the tenant, or his representative, as the case may be, shall be entitled to conpensation for the outlay in money or labour, or both, expended in making such improvements by him or the person from whom he has inherited, or whom he represents, within thirty years—"

Now take the case of the chief improvements which the tenant would make. Beyond reclaiming jungle, beyond cultivating waste land, which would cost him considerable labour, the improvements for which the Bill intended to provide were described in section 13, and were such as must improve the letting-value of the land. They were described as—

"the construction of works for the storage of water, for the supply of water for agricultural purposes, for drainage, and for protection against floods; the construction of wells, the reclaiming, clearing and enclosing of waste lands and jungles, and other works of a like nature;

"the renewal or reconstruction of any of the foregoing works, or such alterations therein or additions thereto as are not required for maintaining the same, and which increase durably their value."

Now it appeared to His Excellency that if it was right and just to give a man who made improvements coming under those limitations and conditions compensation for what he had done, it would be equally incumbent on us to give compensation to his heirs within a reasonable time. What man of sense or foresight would spend much money or labour in the constructiou of wells or *kuls* or cuts from canals and streams, if, at the day of his death, all would be lost? His Excellency could not conceive any possible distinction between the man who made such improvements and the heir who succeeded to the land. For his own part, without attempting to lay down rules as to what particular tenant should or should not be entitled to compensation, His Excellency must say his own view after all agreed with that of the Hon'ble Mr. Strachey that compensation should

not be confined to occupying tenants. It seemed to HIS EXCELLENCY that if a tenant-at-will had the enterprise and spirit to make improvements, he ought, under the limitations proposed, to be entitled to compensation for those improvements. He believed the Hon'ble Mr. Strachey had said that such a rule would in the long run be advantageous to the landlord. HIS EXCELLENCY believed that every man who had had much dealing with agricultural matters, at any rate in Northern India, would agree with him in saying that, in the great majority of cases, improvemants were made either by the cultivating proprietor or the landlord, and that where the landlord did not cultivate, he rarely ever made any improvements. Such being the case, HIS EXCELLENCY thought it would be a broad and wise policy to encourage improvements for the cultivation of the land in one way or another.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to facilitate the improvement of land in the North-Western Provinces—The Hon'ble Mr. Maine, the Hon'ble Sir Richard Temple, and the Hon'ble Messrs. Cockerell, Gordon Forbes and Shaw Stewart and the mover.

The Council adjourned till Monday, the 11th January 1869.

CALCUTTA,
The 4th January 1869.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Government of India Central Printing Office.—No 844 L. D —2-6-82.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Monday, the 11th January 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, *presiding*.
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
The Hon'ble Major General Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Sir George Couper, Bart., C. B.
The Hon'ble Mahárájá Sir Dig-Bijay Singh Bahádur, K. C. S. I., of Balrámpúr.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

CIVIL COURTS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART, in moving for leave to introduce a Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay, said that the Bombay Government had asked that the Bill might be introduced into this Council, and had stated the following reason for so doing:—

"The main reason for the passing of the Bill is the unsatisfactory state of the present law on the constitution of our Civil Courts. This law is contained in the unrepealed fragments of Regulations passed in the years 1827, 1830, 1831, 1833, and 1834, which enacted such modifications of the original system as experience suggested. And thus, although the law when ascertained may be simple enough, it has come to be stated in so complicated a way that there are few persons by whom it is thoroughly understood. So much of the old Regulations also has been cancelled or controlled by recent legislation, that they have become unsafe author-

ity. By this Bill the unrepealed portions of seven Regulations, and entire chapters of other Regulations, will be removed from the Statute Book, their essential provisions being reproduced in one convenient law."

The Bill also proposed several amendments in the law, with which, however, he would not trouble the Council, as they had already received the general approval of the Bombay Government and High Court, with one exception. That exception related to the patronage of the Subordinate Civil Courts. The Bill would be so drafted as to give effect to the views of the Bombay Government in this respect, but he would not fail to lay before the Select Committee the views of the High Court, which were to a certain extent opposed to that of the Government. The reason for bringing in the Bill in this Council was that the jurisdiction of the High Court was to a certain extent affected by it, and therefore the local legislature was not competent to entertain such a law.

The Motion was put and agreed to.

PRISONERS' TESTIMONY BILL.

The Hon'ble Mr. Cockerell introduced the Bill to provide facilities for obtaining the evidence of prisoners and for service of process upon them, and moved that it be referred to a Select Committee with instructions to report in six weeks. He said that when the subject of this Bill was last before the Council he had stated that its main object was the removal of the disadvantage under which parties to suits were at present placed through their practical inability to procure the evidence of prisoners confined in any jail, however material the evidence of such prisoners might be to the issue of those suits. It only now remained to notice in detail the provisions of the Bill by which it was proposed to secure the attainment of that object.

All Courts were invested with authority to direct, subject to certain exceptions, the bringing up of prisoners confined in any jail situated within a hundred miles from the Court in which the evidence of such prisoner was required. The exceptional cases were where, having regard to the personal character or the circumstances attending the imprisonment of any prisoner or class of prisoners, it might appear to the Local Government undesirable to allow the removal of such prisoner or prisoners from the place of his or their confinement, and where, by reason of the sickness or infirmity of any prisoner at the time of the receipt of the order for his appearance in Court, the officer responsible for his safe custody might be unable to comply with the order without serious risk to the prisoner's health. In all such cases the Courts were authorized to procure the prisoner's evidence by commission, and the Bill prescribed the mode in which

all commissions issued by the Courts for taking the evidence of prisoners confined in any jail were to be executed.

An extraordinary power for the bringing up of prisoners confined in any jail situated at a distance of more than a hundred miles from the Court where their evidence was required, was vested in the High Courts.

That there might be some check upon the indiscriminate exercise of the power of bringing up prisoners to give evidence, all orders for such removal made by any Court subordinate to the District Court must, to have effect, bear the countersignature of the Judge of such District Court.

Ordinarily the expense incurred in the bringing up of any prisoner to give evidence, would be borne by the applicant for his production in the same way as the cost of the attendance at Court of any other witness would have to be borne by the party requiring such attendance, but that there might be no risk of the object of the Bill being frustrated owing to the expense of the bringing up of prisoners being more than any suitor was able to meet, special provision was made in the Bill for the payment in advance by the Court, at its discretion, from any funds at its disposal, of the cost of the prisoner's attendance to give evidence; the sum so advanced being made recoverable by the Government in the same way as costs of suit might be recovered under the Code of Civil Procedure.

Lastly, the power of framing rules for regulating all matters connected with the bringing up of prisoners to give evidence in any Court, as also the cost thereof, was vested in the Local Governments.

The Motion was put and agreed to.

OUDH TALUQDÁRS' BILL.

The Hon'ble MR. STRACHEY moved that the Report of the Select Committee on the Bill to define the rights of Taluqdárs and others in certain estates in Oudh, and to regulate the succession thereto, be taken into consideration. He said:—"Sir, about a year and a half has elapsed since the time at which this very important Bill first came before the Council. When I moved for leave to introduce the Bill I explained the objects which were aimed at. I stated that its main object was really a very simple one; it was to confirm by law the arrangements affecting the rights of Taluqdárs and others in Oudh which were made under the orders of Lord Canning after the re-occupation of the province in 1858. I said that those orders had placed the Taluqdárs of Oudh in an altogether peculiar position; that they hold their estates upon a tenure

unknown in any other part of India, and that rights have been created by the British Government which it is necessary to protect by law.

I shall not now repeat in detail what has been stated fully in former debates, but I think it will be well to notice the main peculiarities under which the Taluqdárs hold their estates and which render legislation necessary. After the recapture of Lucknow in March 1858, Lord Canning issued his proclamation under which the whole of the land in Oudh was confiscated to the British Government. This proclamation became the means of redressing the injustice which, as Your Excellency and every one else has admitted, was undoubtedly done to the Taluqdárs at the first occupation of the Province. It gave to Sir Robert Montgomery the power of making his arrangements for the pacification of Oudh unfettered by any thing previously done, and this proclamation, which was originally intended as a sentence of punishment and confiscation against the Taluqdárs, became ultimately in the hands of Sir Robert Montgomery the means of enlisting them on the side of the British Government. The political arrangements then entered into by Sir Robert Montgomery formed the basis of the subsequent policy of Lord Canning, and in October 1859 Lord Canning issued the well known orders on which the rights of the Taluqdárs now depend, and copies of which are before the Council. By these orders the Taluqdárs were not only confirmed in the possession of every thing they held at the annexation of Oudh in 1856, but new rights of a valuable nature were also conferred on them. The orders of the Governor General in Council, dated the 10th of October 1859, in accordance with which sanads were issued to the Taluqdárs, stated that—

"Every Taluqdár, with whom a summary settlement has been made since the re-occupation of the province, has thereby acquired a permanent hereditary and transferable proprietary right, namely, in the taluqa for which he has engaged, including the perpetual privilege of engaging with the Government for the revenue of the taluqa.

This right is, however, conceded, subject to any measure which the Government may think proper to take for the purpose of protecting the inferior zamíndárs and village occupants from extortion, and of upholding their rights in the soil in subordination to the Taluqdárs."

It was the opinion of Lord Canning, and he stated this in his speech just before he left India in introducing the Bill to which I shall presently refer, that these orders which I have just quoted had already received the force of law from the Indian Council's Act, and there can be no doubt that this has been the general opinion of the best authorities. At the same time it cannot be very confidently assumed that the highest judicial authority, the Privy Council, would take this view, and the matter is one in regard to which it is not right

that there should remain any possibility of doubt. We are clearly bound to consider that if the orders of the 10th and 19th October 1859, and the sanads then conferred, did not actually create the law on this subject, that they at any rate represent that which Lord Canning intended to be the law and that which the British Government is bound by formal promise strictly to adhere to.

As I endeavoured to explain on a former occasion, the Taluqdár who holds a sanad from the Government has strictly a personal and exclusive right to the property in his estate; the Taluqdár, instead of holding his estate as formerly under the obligations of the Hindú or Muhammadan law according to which his power of alienation by sale or gift beyond his life-time was very limited, now possesses the absolute power of disposing of his estates as he likes. Not long after the orders just quoted were issued, other orders hardly less important were given by Lord Canning introducing the rule of primogeniture for regulating the succession to estates; and there can be no doubt that these orders, as well as the former ones, have either received the force of law from the Indian Councils' Act, or that such force ought to be given to them.

It was one of the last acts of Lord Canning before he left India to introduce a Bill to provide for the very same objects which are now contemplated; copies of that Bill and of Lord Canning's speech made when he brought it forward are now before the Council. After his departure from India the Bill was not further proceeded with under Lord Elgin's Government, and the subject was only revived about a year and half ago under your Excellency's instructions. There has been a general, I may say I think universal, concurrence of opinion that the Bill brought forward by Lord Canning was not altogether a satisfactory measure. I think that every one concurred in the opinion stated in a former debate by the Hon'ble Sir Henry Durand and the Hon'ble Mr. Maine, that the Bill was one which, under any circumstances, would have required considerable alteration. Still, independently of details of drafting, that Bill shows very distinctly what were the real intentions of Lord Canning.

In the former debate I endeavoured to explain that there had been much difference of opinion between the Chief Commissioner, Sir Charles Wingfield, and Lord Canning in regard to the conditions under which the Taluqdárs ought to hold their estates. Sir Charles Wingfield, while he entirely approved of the application of the rule of primogeniture to the succession of Taluqdárs, strongly objected to give to them the power of disposing of their estates in contravention of the principles of Hindú and Muhammadan law, and I quoted, in the former debate, passages from letters which he addressed on

this subject to the Government. He expressd his strongest apprehension that the effect of giving to the Taluqdárs a power over their estates not possessed by landholders in any other part of India, which he said was not actually enjoyed by them, which they did not ask for, and which was opposed to the tenets of their religion and to the most authoritative decisions of our tribunals, would result in the breaking up of the great estates in Oudh and in frustrating the very policy which the Government had so much at heart. He said that it was laying down a totally new doctrine to assert that a Taluqdár is free to dispose of his estate in any way he pleases, and that this novelty was opposed to the feelings of the people and to the policy of the Government. But the Governor General did not accept the views of Sir Charles Wingfield. In the orders of the 17th July 1860 he said:—

"The Governor General in Council will not consent to limit the absolute power over his estate which has been guaranteed to every Taluqdár in Oudh, and is convinced that the existence of such a power is just as essential to the prosperity of the province and to the maintenance of a landed aristocracy on a sound footing, as the extension of the rule of primogeniture in cases of intestacy. As, on the other hand, it will be in the power of every Taluqdár to refrain from making a will, and so to allow his estate to devolve undivided on his nearest heir, or, if childless, to adopt a son who will inherit the whole of his estate, or to bequeath it by will to any one person whom he may wish to designate as his successor, so, on the other hand, it is right that he should be at liberty to bequeath his estate to more than one person, in accordance with Hindú or Muhammadan law, or otherwise as may suit his pleasure."

These orders were carried into effect and sanads were given to the Taluqdárs accordingly; that is, they received an unlimited power of disposing of their estates either by gift during life-time or by bequest. I ought to have said before, in speaking of the difference of opinion on this subject between the Governor General and Sir Charles Wingfield, that the views of Sir Charles Wingfield were subsequently strongly supported by the Secretary of State for India. In a despatch dated 17th August 1861, he wrote as follows:—

"I do not perceive why, on grounds either of justice or of policy, your Excellency's Government desire to give the Taluqdárs a more absolute control over their estates than could have been the case if they had inherited them from their ancestors. In such cases the estates would have been subject to the prescribed conditions of such property, and could not have been disposed of in the unrestricted manner in which the proprietors are now declared by you to be competent to give or bequeath them to whomsoever they please. And when I consider the effects of *zanáná* influence, the frequency of family dissensions, and the general tendency to intrigue, among these people, it appears to me that this latitude of disposal, against which the Chief Commissioner has respectfully protested, may prove an obstacle to the accomplishment of the object which you most desire to realize, the preservation of property in the hands of the lineal representatives of the great families of Oudh."

But in spite of all this there can be no doubt whatever of the nature of the tenure under which the Taluqdárs actually hold. As I said before, Lord Canning refused to admit the validity of the objections of Sir Char les Wingfield, and the Taluqdárs were distinctly told that they would possess absolute power in disposing of their estates. Now, I, for my part, entirely agree in the remarks made by the Hon'ble Sir Henry Durand in the debate on the introduction of this Bill, to the effect that no limitation can now properly be put on the absolute rights conferred on the Taluqdárs of Oudh by Lord Canning, unless with the full consent of the Taluqdárs themselves. I gather from my Hon'ble friend's speech on that occasion that personally he agreed with the opinion which was maintained by Sir Charles Wingfield and which was held by the Secretary of State, that there was reason to apprehend that the effect of doing away with all restrictions of the Hindú and Muhammadan law would result in the breaking up of estates and the frustration of the policy which the Government had in view. This has always been my own view; but having conferred these estates without conditions, I think it clear we cannot now impose fresh conditions without the consent of the Taluqdárs themselves, however much impressed we may be with the belief that the restrictions proposed would be of real advantage to the Taluqdárs. The same view was formerly expressed by Your Excellency, and I believe it has been held by every Member of this Government.

When this Bill came before the Council the Hon'ble Sir Henry Durand expressed a wish that we had as a Member of this Council a representative of the Taluqdárs of Oudh, who would be able to speak with authority on their behalf. Fortunately that wish of Sir Henry Durand has lately been fulfilled, and we have now as a Member of this Council my friend the Hon'ble Sir Dig-Bijay Singh, the Mahárájá of Balrampur, who is well known not only to the Council, but I may say to the whole country, as the most eminent representative of all the Taluqdars of Oudh. I think therefore that I need not say much as to the real wishes of the Taluqdárs themselves in regard to this Bill, because Sir Dig-Bijay Singh can speak on such a point with infinitely greater authority than I can speak myself; but I have been assured not only by Sir-Dig Bijay Singh but by Maharaja Sir Man Singh and the other principal Taluqdárs who are now in Calcutta, and the same thing has been officially reported in a letter now before the Council in the strongest terms by Mr. Davies, the Chief Commissioner, that the Taluqdárs are most anxious that this Bill should become law. Supposing that the amendments which the Hon'ble Sir George Couper intends to propose to-day, to which I hope the Council will agree and which have the entire approval of the Taluqdárs,

are adopted, I believe there will be absolutely nothing in the Bill which is not in accordance with the wishes of the Taluqdárs.

It is proper that I should notice the principal changes made in the Bill since it was introduced. Very nearly every one of the changes have been suggested by the Taluqdárs themselves. The first change which it seems necessary to notice is in the definition of the word "Taluqdár." The difficulties in defining this word were found to be practically insurmountable. The Chief Commissioner, in his letter now before the Council, has stated his belief that no definition could be framed which would not lead to protracted litigation, and that the Taluqdars are unanimous that this matter must be left in the hands of the Chief Commissioner.

It is proposed, thherefore, as the Bill now stands, to entrust to the Chief Commissioner the duty, which is to be carried out within six months, of making a list of Taluqdárs to whom these special provisions of the law will be applicable. Mr. Davies has proposed that the list shall be drafted by the Financial Commissioner and a Taluqdár in whom the others have confidence, and be finally submitted for his approval, and he has intimated to the Taluqdárs that the Government will probably make no objection to this arrangement. The Government will as a matter of course authorize the Chief Commissioner to prepare the list in the way which he thinks best, and in a way which will be consonant with the wishes of the Taluqdárs.

The Chief Commissioner then notices a point which Mahárájá Sir Mán Singh wishes to be laid before the Council. He says:—

"Mahárájá Sir Mán Singh wishes the words 'heir and legatee' added after the word 'person' in the definition of 'Taluqdár.' He thinks that, without this addition, the successors of Taluqdárs will not be considered Taluqdárs. The Chief Commissioner would, however, observe that the Bill leaves it optional with a Taluqdár to choose, before the lists are prepared, whether he will have his estate descend according to the succession laid down in section 19, or whether he will have it follow the law of his tribe and religion. In the latter case the estate would be liable to sub-division, and we might have Taluqdárs with infinitesimal properties, a result which, in the Chief Commissioner's opinion, would not be desirable. It is almost unnecessary to point out that the legatee may be a servant, or a bráhman getting an acre or so as *sankalpa*, and the inconvenience that would arise from calling such people Taluqdárs.

The Chief Commissioner has explained this to Sir Mán Singh, and has assured him that the genuine successor of a Taluqdár will in all cases be recognized; but this is one of the points alluded to in paragraph 2 which he wishes to be laid before the Council."

I need only say that the Committee agreed with the Chief Commissioner; and I need not make any further remarks on this point, because, as the Council

knows, the Taluqdárs themselves expressed their wish to abide by the opinion of the Committee, and it is not a point on which they have laid any stress.

In section 3, which is one of the most important sections of the Bill, some additions have been made. The first addition was proposed by the Chief Commissioner; it provides for cases in which, subsequently to their issue, it was found necessary to make alterations in the sanads, and to provide against claims being set up to estates which had been originally settled with one party, but which were subsequently resumed and made over to another person. For example, in one case, a taluqá was settled in the name of a man who was afterwards discovered to have been a notorious rebel and who was killed in fighting against our Government; the estate was subsequently given to a loyal Taluqdár; but as the summary settlement was not made with him, he would not, as the Bill was originally drawn, have been entitled to the privileges of a Taluqdár. The additions made to the section at the suggestion of the Chief Commissioner have provided for this difficulty.

The next addition has been made at the wish of the Taluqdárs themselves; it extends the privileges given under Lord Canning's sanads to estates subsequently decreed to the Taluqdárs by the Court or Officer engaged in making the first regular settlement of the Province. This will be an important additional boon to the Taluqdárs.

It will be observed that there is an important change at the end of section 3. As the Bill originally stood, it provided that the estate should be held subject to all the conditions affecting it in the form of sanad contained in the orders passed by the Governor General of India on the 10th and 19th of October and republished in the schedule of the Bill. It was subsequently pointed out that all the sanads are not in that form, but that several other forms had for some reason or other been adopted. As it would be evidently unadvisable to invalidate those sanads, it was thought proper to insert the words "subject to the conditions under which the estate was held," and the form of sanad has consequently been omitted from the schedule.

An important alteration has also been made in section 4. It was pointed out by the Chief Commissioner that, as the Bill was drawn, the Taluqdárs, whose property on account of their special loyalty was exempted from confiscation, would be really on a worse footing in regard to the title to their estates than the Taluqdárs who took part in the rebellion, for it would be necessary for them to show that they had possessed before the annexation of

Oudh the proprietary right in their estates, while in other cases it would be sufficient that the summary settlement was made with the Taluqdar. This error has been corrected by the Select Committee.

An important section (6) has been added, which it is necessary that I should explain; it refers to the redemption of mortgages in taluqás. The Council will remember the circumstances under which Act XIII of 1866 was passed. The principal object of that Act was to permit the redemption of mortgages in taluqás executed after the 13th of February 1844, the terms of which had not expired at the date of the annexation of the Province, the equitable rights of mortgagors having been unintentionally confiscated and transferred to the Taluqdárs under the orders of October 1859. The Taluqdárs, admitting the justice and propriety of affording a remedy in such cases, agreed to waive the objections they might legally be entitled to make to the redemption of mortgages. The Act was passed, and the Taluqdárs were publicly thanked for their liberality by the Government and the Secretary of State. But unfortunately no reference to these claims of mortgagors was made in the Act itself, and it is now said on high legal authority that it is very doubtful whether, notwithstanding the notorious circumstances under which the Act was passed, a suit to redeem a mortgage in a taluqá is not legally barred; and the Chief Commissioner has lately reported that a Taluqdár who took a prominent part in making the concessions for which the Taluqdárs obtained so much credit, has actually pleaded in Court that redemption of a mortgage in his estate is barred by his sanad. There is not the slightest doubt that the Taluqdárs generally would entirely repudiate any such dishonorable conduct as this, but they themselves are of opinion that it would be very desirable to add to the present Bill a section which will remove all doubt on the subject. All that I need further say on this point is that there is no novelty of any kind introduced by this section; it merely repeats the provisions of the existing law, Act XIII of 1866, and removes the legal doubts which I have just noticed.

Section 7 has been added at the request of the Taluqdárs. It is taken from the draft Bill of Lord Canning, and provides that certain articles shall be treated as if they were heir-looms, and shall descend with the landed property I do not suppose this will be objected to.

In section 8, it is proposed to give to Taluqdárs or Grantees the option of declaring for succession according to the rules of primogeniture, at any time within six months after the passing of the Bill. If any Taluqdár to whose family the rule of succession according to primogeniture does not

already apply wishes it so to apply, he will now be able to carry out his wish. The Chief Commissioner writes :—

"Originally the Taluqdárs stood out for the right to choose at any time, alleging Lord Canning's Bill to that effect. The Chief Commissioner, however, thought this undesirable, and he thinks the language of Land Canning's Bill, though not clear, does not possess the force the Taluqdárs would ascribe to it. The compromise contained in the Bill now submitted has, however, satisfied them, and the Chief Commissioner trusts will be approved of by Government."

I think that this proposal to which the Taluqdárs have agreed is reasonable, and I do not think it would have been right, in the absence of a distinct promise, on the part of the Government, to extend the option of introducing the rule of succession by primogeniture further than the Bill now contemplates.

Section 11 has received an addition making the provisions of the Indian Succession Act in certain particulars regarding the execution of wills, applicable also to gifts; to the effect that persons who are deaf or dumb or blind are not thereby incapacitated for making a transfer or bequest if they are able to know what they do by it; that one who is ordinarily insane may make a transfer during an interval in which he is of sound mind, and other provisions of a similar sort. No one can doubt that this is proper.

In section 13, clause 2 has been added at the express request of the Taluqdárs. As the Bill originally stood, a Taluqdár desiring to leave his estate to a younger son instead of to the eldest son, would only be able to do so by will executed twelve months before his death and registered. The Taluqdárs, although they accepted, with the exceptions presently to be noticed, the proposed restrictions on the power of gift and bequest to persons not belonging to their own families, desire that they should retain the power of setting aside the eldest son in favour of a younger son. There is no doubt that this is quite in accordance with the former custom of the country; and as the Taluqdár. propose it, I do not see any reason why the Government should object to it. I will here notice also the section which places restrictions on the power of the Taluqdárs to give or bequeath their estates for religious or charitable purposes. As the Bill originally stood, following the provisions of the Indian Succession Act, no Taluqdár or Grantee would have had the power of bequeathing his estate for religious or charitable purposes except by will executed and registered twelve months prior to his death; that period has, in the Bill as it now stands, been reduced to three months. The Taluqdárs alleged it was the custom of the country to make such gifts on the death-bed; and they requested that gifts or bequests of this nature should be permitted to be made up to a limit of two thousand rupees. I think this is a reasonable compromise, for

although the checks on the exercise of improper influence will not be so circumscribed as by the Succession Act, they will, I think, for all practical purposes be sufficient, and it is to the credit of the Taluqdárs that they have seen the propriety of applying checks on mortmain alienations similar to those which have been found necessary in all civilized countries.

Regarding the 14th and 15th sections I need not say much, because the Hon'ble Sir George Couper will propose to amend them. The Taluqdárs originally wished that these sections should be simply omitted. The Select Committee found it impossible to agree to that proposal, and this was really the only point on which there was any difference of opinion between the Committee and the Taluqdárs. The Committee thought—and I think there can be no question that they thought rightly—that the result of agreeing to what the Taluqdárs originally wished would be inconvenient to the last degree, although there can be no doubt that it would have been in accordance with the provisions of the Bill introduced by Lord Canning. The result would eventually have been that there would often have been two different laws or succession applicable to the property of the same person. This is not a question falling within the engagements of Lord Canning. Those engagements were made for special political purposes, and they were intended to give certain exceptional privileges to certain selected individuals; not only did Lord Canning not desire, but it would have been contrary to his policy to make these privileges separable from the families of the Taluqdárs themselves. If these sections had been omitted, and a Taluqdár to whose family the rule of primogeniture was applicable, had sold a patch of land to a shop-keeper, the succession to that field would have been for ever governed by the rule of primogeniture, although the succession to all the rest of the owner's landed and other property would be governed by a different rule. I will not say more on this subject, because Sir George Couper will propose amendments to which the Taluqdárs have expressed their assent.

In sections 21 and 22, which are sections of great importance, containing special rules of succession to the estatss of Taluqdárs, considerable changes have been made in the Bill as it originally stood, and the provisions of which were taken, I believe without any alteration at all, from the Bill of Lord Canning. These changes have been made solely at the request and in accordance with the wishes of the Taluqdárs. I will read what the Chief Commissioner has said about them:—

"The Taluqdárs are, it is needless to say, the authors of these changes, which are approved of, and agreed to, both by Hindús and Muhammadans. The Taluqdárs expressed very strong objections to clause 5 as it stood in the draft Bill, as they said, and said truly, that the introduc-

tion of the whole body of male collaterals in that place would exclude the widow and her adopted son entirely, though looked upon in the country as having the best title. They have, therefore confined the collaterals to the brothers of the Taluqdárs and their descendants, and relegated the rest to the last clause and the protection of the ordinary law of the land. They have, moreover, introduced daughters' sons before adopted sons, and drawn a marked distinction between the issue of marriage and inferior marriage, a point upon which they have always laid much stress. Finally, they have desired to provide that the estates shall in no case undergo partition by the mere action of intestate succession. As the Bill has been drawn up at the request of the Taluqdárs for the security of themselves and their families, and Government had reserved no point in regard to this section, the Chief Commissioner considers it best to yield to their general wish, especially as he sees no reason for adhering to Lord Canning's draft Bill if the Taluqdárs wish it altered in a direction which, as far as it goes, is in accordance with the ordinary law of the land."

I do not think any one need object to meeting the wishes of the Taluqdárs in this respect, and I think that as these changes are not only in accordance with the unanimous desire of the Taluqdárs, but are also as far as they go in accordance with the Hindú and Muhammadan law and the custom of the country, we may fairly suppose that they will be beneficial.

Sections 24 to 28 regarding the maintenance of widows and children have been substituted for section 21 of the original Bill. That section was specially noticed with approval by my Hon'ble friend Sir Henry Durand when I introduced this Bill, and he said that if it had the consent of the Taluqdárs, or of a large majority of them, he thought that it would remove what was the essential blot in the Bill of Lord Canning. I am glad that the Taluqdárs have admitted the justice of what was proposed. Sections 24 to 28 as they now stand contain the proposal of the Taluqdárs themselves; they objected to some words which were indefinite in the original Bill and desired that the relatives who were entitled to maintenance should be distinctly specified, and they also proposed that a scale should be laid down beyond which the Courts should not be permitted to go. The persons, and conditions under which these persons should receive maintenance, have accordingly been specified. The Chief Commissioner thought, and the Committee also thought, that the maintenance proposed by the Taluqdárs was fair. I hope, as the Chief Commissioner has said, that it may be anticipated that there will really come before the Courts very few cases of this kind.

There is one point which I have omitted to notice. This regards section 19 by which it is proposed to apply to the wills of Taluqdárs certain sections of the Indian Succession Act. The Taluqdárs originally felt some doubt about this, as the Council will see from the Chief Commissioner's letter. The Select Committee, however, was very strongly of opinion that there was hardly any

part of the Bill more valuable to the Taluqdárs themselves, and it was therefore unwilling that, in consequence of what seemed to it a misconception on the part of the Taluqdárs, they should lose the very great advantages which the Committee thought would be bestowed on them by the introduction of this section. I am glad to say that the Taluqdárs on further consideration have agreed to the recommendation of the Committee that the section should be restored. The Chief Commissioner in his letter said :

"They are under some fear, however, that the stringency of the provisions concerning the registration of wills may militate against their interests, as they conceive that the Act requires the registration of a will within the district of the testator's residence, and that if they happen to die at a distance from their homes their wills may be invalid."

These fears of the Taluqdárs arose from a misconception of certain sections in the Succession Act. They had confounded probate of a will with previous registration, and in the sections of the Succession Act which it is proposed to extend to the wills of Taluqdárs, there is nothing referring either to probate or registration. The provisions of that Act regarding the execution of wills which it is proposed to make applicable to the wills of Taluqdárs are, I think it may safely be asserted, as good and simple as any provisions can possibly be.

The Chief Commissioner in his letter regarding the Bill wrote as follows, and I think it right to read this to the Council :—

"Mahárájá Sir Mán Singh wishes certain letters (specified in the margin) appended to the schedule of the Bill in addition to those of the 10th and 19th of October. But the Chief Commissioner is strongly opposed to comply with this request; first, because the language of these letters is either irrelevant or redundant as regards the subject-matter of the Bill; secondly, because it is in part extremely general and vague, and certainly not intended for legislative purposes. Moreover, as these letters were in existence when the draft of the Bill introduced by Lord Canning was made, the absence of all allusion to them in it is decisive as to His Excellency's not considering them as any necessary part of the deliberations of the Government, resulting in the grant of proprietary rights in their taluqás to the Taluqdárs. The reason which the Mahárájá gives for bringing forward the matter is lest he may hereafter be charged with neglect for not having done so at the present time."

1. The orders and promises of the Special Commissioner, passed and made under the sanction of the Chief Commissioner.
2. Para. 4 of Government letter dated 16th October 1858.
3. Para. 4 of the Viceroy's speech in Durbar at Lucknow in October 1859.
4. Para. 10 of the Secretary of State's despatch dated 10th February 1865.
5. Para. 22 of the same despatch.

The Committee carefully considered this point, and came to the conclusion, which I think the Council will agree was the only conclusion which could be come to, that it was impossible to include these letters amongst the orders to which it is proposed to give the force of law. The letters in question

have been circulated, and I think there is not likely to be any difference of opinion on the subject. I need only add that Sir Mán Singh has said to me that although he thought it his duty towards his brother Taluqdárs that the existence of these letters should not be forgotten, he is aware that there would be great difficulty in actually turning them into law. Any legal force which these orders of the Governor General may possess will not be affected by the present Bill if it becomes law.

There is one other point of importance in sections 5 and 6. These sections give to grantees the same rights and privileges which are held by Taluqdárs. There is no doubt that this is in accordance with Lord Canning's intentions; there are orders of his which show this quite plainly. But a difficulty has been suggested in regard to the redemption of mortgages in the estates of grantees. When the Taluqdárs agreed to allow the redemption of mortgages on their estates, nothing was said regarding grantees, and Act XIII of 1866, although passed with the consent of the Taluqdárs, cannot be said to have been passed with the consent of the grantees. The Chief Commissioner says:—

"The Courts may therefore any day be placed, as regards the grantees' estates, in the dilemma of having to decide whether the unconditional grant of the Governor General or the Statute Law is to prevail. Under these circumstances, the Chief Commissioner is of opinion that the Government should, following the plain intention of Lord Canning, enforce the same law for the preservation of under-proprietary and occupancy rights and for the redemption of mortgages in respect of the granted estates as of the taluqás acquired by summary settlement, but that at the same time it should announce its intention of compensating the grantee for any losses which he may sustain through the operation of that law."

I am authorized by Your Excellency in Council to say that the Government accepts this responsibility, and that if in any case, in consequence of the application to grantees of the rule which is applicable to taluqás, it should be found that a grantee is involved in loss, the Government will be prepared to make compensation.

One very important section has been added to the Bill which requires explanation. This is the last section of the Bill. When I introduced the Bill, I pointed out that in certain cases very injurious consequences had followed from the operation of Lord Canning's orders, and that in some cases great injustice had resulted. I gave as an example the following hypothetical case:—

"Before the annexation of Oudh there may have been two brothers in joint possession of an ancient family estate. One brother had the management of the whole, and gave to the other brother the share of the profits of the estate to which he was entitled. In 1858 a summary

settlement was made, to determine the amount of the revenue that was to be paid by each estate to the Government. It was supposed when this settlement was made that it would last only until a regular settlement could be made in the usual way. In consequence of some accident or other, one of our two brothers did not appear when the summary settlement was made. The other brother appeared before the settlement officer, and a summary settlement for the revenue was made with him accordingly. The other brother shortly afterwards came back, and reassumed, without objection, the position in the estate which had formerly belonged to him. A year or so afterwards he found, to his astonishment, that every right which he had possessed had ceased to exist, and that his brother had become the sole owner of the estate, with absolute power to give away, or sell, or bequeath, the whole or any part of it as he pleased. And on the death of this brother, unless he makes some other disposition of the property, the estate, supposing it to be one to which the law of primogeniture has been made applicable, will descend to his eldest son to the exclusion of the rest of the family."

There were many cases in which the rights in taluqás of persons who had interests co-equal but not subordinate to the Taluqdár had been swept away by the operation of Lord Canning's orders. I said in the last debate that I had no doubt that this result had never been intended. I did not propose it as a matter with which the legislature should deal, but I noticed that the matter was one which the Taluqdárs themselves had taken up, and that they were very anxious, without any interference on the part of Government, to make such arrangements for their less fortunate relations as were equitable. The Government has lately received, through the Chief Commissioner, a report of the proceedings of the Taluqdárs in regard to this matter. The Chief Commissioner's letter, and the report of the Financial Commissioner Colonel Barrow, have been circulated to the Council. The Chief Commissioner writes as follows :—

"It will be in the recollection of His Excellency in Council that the Courts have decreed that, under the sanads given under the late Lord Canning's authoriy to the Taluqdárs, the person named in the sanad, and he alone, has the right granted by the British Government, and that no other equal or superior right exists except that of the Government to its revenue. It is plain, therefore, that in the present state of the law the claimants in these so-called suits can get nothing from our Courts but that which the defendants, acting under the influence of the principal Taluqdárs, consent to give them."

It was thought by the Special Committee that this suggestion of the Chief Commissioner, which was in entire accordance with the wishes of the Taluqdárs, should be adopted. It was thought highly important to avoid the possibility, I may say certainty, of future most harassing litigation on the subject. The Chief Commissioner and Financial Commissioner have given a satisfactory report regarding the arrangements which have been voluntarily proposed by the Taluqdárs for their relations who are in the unfortunate position which has

been described. The Chief Commissioner states that the great majority of claims which had been made against the Taluqdárs have been voluntarily adjusted, and I have been told that in most instances the arrangements have been accepted by the relatives of the Taluqdárs themselves. If in any cases completely satisfactory arrangements have not been made, all that one can say is that as these unfortunate people have now no legal rights whatever, we must be satisfied that they have received even this meed of justice. The Chief Commissioner has said that he—

"considers that the leading Taluqdárs mentioned by Colonel Barrow, and especially Mahárájá Sir Mán Singh, deserve great credit for the time and trouble which, in compliance with the Viceroy's desire expressed in the Darbar held last year at Lucknow, they have bestowed upon these complicated investigations. In some cases the maintenance awarded is on a very liberal scale, and the Chief Commissioner considers the general result as satisfactory as can possibly be attained under the circumstances.

As regards Colonel Barrow himself, the Chief Commissioner would observe that it is mainly to his energy, tact and personal influence with the disputants that a settlement has been made of these difficult cases. He will be glad if His Excellency in Council shall see fit to acknowledge the patient and unremitting exertions with which they have brought these vexed cases to a conclusion."

This recommendation of the Chief Commissioner has been acted upon in accordance with Your Excellency's orders.

There is nothing more in the Bill on which the Taluqdárs have made any remarks: consequently I need not take up the time of the Council any more. I however think it desirable to read to the Council the last portion of the Chief Commissioner's letter of the 3rd instant, though it refers to a subject on which, as I said before, the Hon'ble Sir Dig-Bijay Singh can speak with greater authority than I can. Mr. Davies writes:—

"Mahárájá Sir Mán Singh has repeated in strong terms to the Chief Commissioner the anxious wish of the Taluqdárs generally, that the Bill may be passed before the departure of His Excellency the Governor General. He professes himself, and the Taluqdárs generally, sensible of the advantage of having their titles to their estates affirmed by legislative enactment, whether they be already good under the Indian Council's Act or not. He further states that the Talqudárs now in Calcutta, whom the Chief Commissioner esteems to be among the most astitute and tenacious of the body, have in no way exceeded their delegated powers in expressing their common assent to the provisions of the Bill, which have been discussed with the Financial and Chief Commissioners in repeated and lengthened interviews, which have been most carefully translated for their information and criticism and to which they have categorically agreed. In the event of any doubts being felt on this head, the Chief Commissioner begs that the Taluqdárs themselves may be personally consulted, as he has not allowed his private opinions as to the tenor of the Bill to prevent his giving an undue share of his attention to the reflection

of the ideas of the Taluqdárs in the provisions of the Bill specially affecting their supposed interests, he trusts that the Government will concur with him in thinking that any further avoidable postponement of legislation can only result in injury and disappointment to the Taluqdárs themselves."

I will only add that Sir Mán Singh has stated to me personally exactly what he stated to the Chief Commissioner, and that I hope that this Bill may pass into law to-day.

The Hon'ble Mahárájá SIR DIG-BIJAY SINGH spoke in Hindústání to the following effect:—"The popular and useful Rules and Regulations passed by His Excellency the late Lord Canning and brought into action by Sir Charles Wingfield, together with the sanads imbued the minds of the Taluqdárs and the tenantry of Oudh with a feeling of peace and security, and the prosperity which resulted needs no comment. Similarly when, during the course of the Regular Settlement of the different taluqás, this feeling was in a measure disturbed by the institution of a vast number of cases by the near kinsmen, the sub-proprietors and the cultivators of the soil, all desirous of having their rights justly defined, the Hon'ble Mr. Strachey, Mr. Davies, and Colonel Barrow spared no trouble in preparing, according to Your Excellency's suggestions, and with the concurrence and assistance of the Taluqdárs, the Bill now under Your Excellency's consideration. This in my humble opinion, and in that of the Taluqdárs generally, is fully calculated to establish with greater precision and clearness our rights over our estates, and by setting aside all doubt and cause of dispute to place us in more substantial security. Being thus blessed, I beg herewith to tender to Your Excellency my warmest thanks on behalf of the whole community, who will for ever pray to the Almighty for Your Excellency's long life and daily increasing prosperity."

The Hon'ble SIR GEORGE COUPER said, that with the permission of His Excellency he would say a few words regarding the provisions of the Bill, although, in so doing, he would have to traverse to a certain extent the same ground which had already been gone over so fully and so ably by his Hon'ble friend the mover, and might perhaps be repeating arguments which had already been heard by the Council during the progress of debates which took place a year and a half ago when he was absent from the country, and which he had not had an opportunity of perusing. In fact he was not previously aware that there had been any debates on the subject since the departure of Lord Canning. In such case, if what he had to say was a mere repetition of arguments which had already been heard, he could only throw himself on the forbearance of the Council.

The late Lord Canning gave the Taluqdárs of Oudh the absolute right of alienation in their estates, that is, he gave them the right to alienate their estates

by gift or will or sale, or in whatever manner they pleased, and at whatever time they pleased.

Sir Charles Wingfield, who was then Chief Commissioner of Oudh, and who certainly could not be accused of any undue bias against the Taluqdárs, represented to Lord Canning that he proposed to give them more than was allowed either by the Muhammadan or by the Hindú law, and more than was enjoyed by any other landholders in any other part of India. In spite, however, of Sir Charles Wingfield's remonstrances, repeated over and over again in language as strong as an officer in the position of a Chief Commissioner could venture to use when addressing a Viceroy, Lord Canning adhered to his original determination, and the letters to the Chief Commissioner in which he invested the Taluqdárs with the right to alienate their estates how and when they would, were believed, under the Indian Councils' Act, to have the force of law, although, as pointed out by his Hon'ble friend the mover, the highest legal authority thought it not impossible that the Judicial Committee of Her Majesty's Privy Council might be of a different opinion.

Now this Bill, while confirming the Taluqdárs in the rights of alienation vested in them by Lord Canning, imposed certain restrictions on the exercise of those rights. At present, a Taluqdár, actuated by the freak of the moment, or actuated by the fright of the moment, as the case might be, could disinherit his whole family in favour of a clever dancing girl, or of a designing priest. The power of acting in this manner would not be taken from him, but, before doing so, he would have to observe certain formalities regarding which it was unnecessary for him (Sir George Couper) to enter into fully, seeing that they had been touched upon by his Hon'ble friend the mover, and must be apparent to every one who had read through the sections of the Bill. It seemed to him that nothing could be more just and equitable in themselves than these restrictions on an arbitrary power to alienate. Still, however, they *were* restrictions, and as such under ordinary circumstances he would oppose them. For, he submitted, any restriction by the legislature, under ordinary circumstances, on a promise formally and deliberately made by a Viceroy ten years previously, whether that promise in itself was right, or whether it was wrong, could not be too strongly deprecated.

For it was with the view to pacification after the mutiny that Lord Canning conferred this right to alienate on the Taluqdárs of Oudh. At the same time he conferred certain other privileges, notably the right of adoption, on the Chiefs of Central India and other feudatories, and if those Chiefs under ordinary circumstances were to see the right so bestowed on the Taluqdárs of Oudh restricted in its operation ten years afterwards by legislative enactment, it

stood to reason that they and everybody else would lose all confidence in the integrity of Lord Canning's promises and would naturally regard them as so much waste paper. Moreover, in the event of troublous times recurring, the best inducement which a Viceroy would have to offer influential Natives to espouse our cause would be the prospect of preferment or reward in land in the shape of a jágír or otherwise; and this, which as far as he knew was the most powerful instrument, if it would not indeed be the only instrument, in the hands of a Viceroy, under such circumstances as happened in 1857, would be rendered of no avail if it once got abroad that the solemn and deliberate promise of a Viceroy was liable to be subjected to restrictions, at a subsequent period, by an Act of this Council or of any other authority.

SIR GEORGE COUPER would ask His Excellency, who was in the most trying position of them all in 1857—he would ask His Excellency, he said—to conceive a repetition of 1857 without the godsend of the China Contingent, and with the route through Egypt stopped, and the Viceroy, in his desperate need, offering, say, Sindiah one or more districts in the Province of Bandelkand, or Holkar the restoration of one or more of his Ceded Districts. He did not mean, for a moment, to say that it would be right to adopt such an extreme measure, still less that it would be necessary. That, of course, would depend upon the exigency of the circumstances. But if the Viceroy did take such a step, what would his feelings be—what would the feelings of every other Englishman be—if either of those feudatories were to reply that the promise would suffice to induce him to cast in his lot with us if it could only be trusted, but, as he had no security that the legislature would not, at some future date, impose restrictions on the grant, he preferred to try his fortunes elsewhere, that is, he preferred to see whether he could not get all that the Viceroy offered, and perhaps more besides, by ranging himself on the side of our enemies.

In short, SIR GEORGE COUPER did not think it too much to say that if under ordinary circumstances, that Council, or any other authority, were to take it on themselves to set restrictions on a gift or privilege conferred by the representative of Her Majesty during time of need, or for the matter of that at any other time, the only hold which we still possessed on the Natives of this country would be lost, and we should have absolutely nothing left to trust to except the sword.

It was, therefore, only under the most special and exceptional circumstances that SIR GEORGE COUPER would vote for the passing of this Bill. Such circumstances, however, really did exist in this instance. They had been stated by his Hon'ble friend the mover, they had been conferred by his Hon'ble friend the Maharájá of Balrámpúr, and might be summed up in the fact that, in con-

sideration of the benefits which they will otherwise derive from the Bill, the Taluqdárs of Oudh have formally expressed their wish and desire that the restrictions which it imposes on their original right to alienate may be made.

This seemed to him (SIR GEORGE COUPER) sufficient to satisfy the most jealous guardian of our national good faith as represented by the promises of a former Viceroy. For the Chiefs of Central India will know that, unless they themselves request that restrictions may be imposed on their right of adoption, Lord Canning's promises to them in that regard will be respected. Nor will any other past or future recipient of a Viceregal gift or privilege be disposed to distrust its validity, if he knows that he can only be restricted in its exercise with his own free will and consent.

SIR GEORGE COUPER had ventured to trespass at this length on the patience of the Council for two reasons: *First*, because, bearing in mind the fact that the Bill will impose restrictions on the right to alienate bestowed by Lord Canning and hitherto enjoyed by the Taluqdárs, he thought it highly desirable that the public in general and the Native community in particular should fully and thoroughly understand that the Bill had been introduced and would be passed, if it were passed, with the full consent and approbation of those whose interests were most immediately affected. *Secondly*, because he thought His Excellency and Hon'ble Members might perhaps like to hear from the lips of a man who was at Sir Charles Wingfield's right hand during his advocacy of the cause of the Taluqdárs in 1864 and in 1865, and who might therefore fairly claim to have their interests at heart, that he believed the provisions of this Bill would be conducive to those interests in the fullest and truest meaning of the words, so much so, that, unless it were passed, the original object which Lord Canning declared himself to have in view, the creation of a powerful landed aristocracy in Oudh, would, in the course of a generation, be completely defeated.

HIS EXCELLENCY THE PRESIDENT said:—"The Hon'ble Sir Dig-Bijay Singh has expressed his satisfaction at the prospect of the Bill before the Council being passed to-day; I am also glad to be able to participate in that satisfaction. The Bill has been drawn with the view of giving the Taluqdárs of Oudh as complete rights as they wished over their estates, and I may venture to say as full powers as can reasonably be desired. I think with the Hon'ble Mr. Strachey that the limitations proposed on the power of alienating estates are wise and judicious. I can only desire further to add that I trust that the policy which, I hope, will this day receive the sanction of the Council, will be so worked by the Taluqdárs and their descendants that we never shall have cause

to regret that policy. It is in the hands of the Taluqdárs themselves to make their privileges a blessing or a misfortune to their relatives, to the subordinate proprietors, and to the cultivators of the soil, and I trust that they and their descendants will so discharge the duties which are bound up with their rights that the British Government will be satisfied that the policy which is now being declared is sound. I understand from the Chief Commissioner of Oudh and from the Hon'ble Mr. Strachey that a certain number of the Taluqdárs of Oudh are in circumstances of difficulty, partly owing to the events which occurred during the mutiny; and it is hard for any man placed in the position of a Taluqdár to be just and generous where he has difficulties in his own home. Within the last few years a very excellent Bill was introduced in the Council of the Governor of the Bombay Presidency, which eventually became law, enabling the Government to make advances to certain proprietors of land situated in a very similar position to that of the Taluqdárs of Oudh. These Native gentlemen were many of them in great distress; many had been sued in the Civil Courts, and decrees had issued against them: I believe also that in some cases their estates had been attached and were under the management of the Civil Courts. The measure introduced by the late Governor of Bombay had for its object to relieve these Native gentlemen from their difficulties and to place them in a satisfactory position. Under the provisions of that Act the Government of Bombay made advances to these Chiefs at moderate rates of interest (I think about five per cent.) with the view of enabling them to pay their debts. On the other hand the landed proprietors bound themselves to repay the money in suitable instalments, and also to adopt a proper mode of managing their estates, so that they should gradually retrieve their former position. By a late report from the Government of Bombay I perceive that this Act has worked satisfactorily, and even in the short period which has elapsed since it was passed, a number of the proprietors have retrieved their position, and most of the others are in a fair way of doing so at no distant period. I propose that the Government of India should act in a like manner towards the Taluqdárs of Oudh. I propose that a letter should be addressed to the Chief Commissioner of Oudh, bringing to his notice what has been done in Bombay, and that he should take the matter into his consideration, and submit a list of those Taluqdárs who he thinks ought to receive subventions from the Government. I think that under good management all those Taluqdárs who are really desirous of retrieving their position can do so if they pursue the course it behoves them to follow, and thus prevent their descendants from arbitrarily selling their estates to meet their necessities. If they fail, they will have no one to blame but themselves, and their descendants will be deprived of all means of maintaining their former position. The measure I propose

appears to me to be justified by sound policy, and I trust that it will also have the effect of showing the Taluqdárs of Oudh that the British Government really desires that they should be maintained in prosperity in their present position."

The Hon'ble Major General SIR HENRY DURAND said :—"Sir, I think that the proposal which Your Excellency has just made in favour of embarrassed Taluqdárs of Oudh is one of a financial character which if ultimately submitted after the reference announced and after mature consideration of the reply to that reference, is a proposal not unlikely to meet with a favourable reception and consideration by the Council. As a Member of this Council I can only say that there would be every disposition on my own part to entertain favourably a well considered measure of the kind indicated, because I feel that the conduct of the Taluqdárs has throughout, both in the consideration of the previous Oudh Bill and of the present Bill, been, for many reasons which I shall not enter upon, really admirable.

Having on several occasions, when the opportunity occurred, remarked upon the difficulties which beset a Bill which aims at combining conflicting principles of law, I shall only now very briefly advert to these inherent difficulties. It is impossible not to foresee that much litigation may arise under the provisions of this Bill, but still I am in favour of not delaying the passing of the Bill; for until some measure of the kind passes this legislature and gives legal validity to the status and tenures of the Taluqdárs, there must remain more or less of uncertainty as to their titles and estates. My hon'ble and learned friend opposite will correct me if I am wrong, but in the absence of a legal sanction such as this Bill confers, questions might arise when cases were appealed to Her Majesty's Privy Council, which might, according to the mode in which they were viewed by that high tribunal, endanger or prove detrimental to the rights of the Taluqdárs. I am therefore in favour of passing this Bill, if only to secure a substantial and legal foundation for the titles and tenures of the Taluqdárs—a basis which neither in this country nor before the highest tribunal, namely, Her Majesty's Privy Council in England, can be shaken. I am desirous of a formal legislative enactment being passed which gives the authoritative sanction of law to rights and titles and tenures not as yet confirmed by such additional security, and renders it difficult to contest them hereafter."

The Motion was put and agreed to.

The Hon'ble SIR GEORGE COUPER moved the following amendments:—

"1. That, to section 7, the words 'otherwise than as mortgagee or lessee' be added.

2. That, for sections 14 and 15, the following be substituted:—

Transfers and bequests to taluqdárs or heirs.

'14. If any taluqdár or grantee shall heretofore have transferred or bequeathed, or if any taluqdár or grantee, or his heir or legatee, shall hereafter transfer or bequeath, the whole or any portion of his estate to another taluqdár or grantee, or to such younger son as is referred to in section thirteen, clause two, or to a person who would have succeeded according to the provisions of this Act to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transferee or legatee and his heirs and legatees shall have the same rights and powers in regard to the property to which he or they may have become entitled under or by virtue of such transfer or bequest, and shall hold the same subject to the same conditions and to the same rules of succession, as the transferor or testator.

Transfers and bequests to persons out of line of succession.

15. If any taluqdár or grantee shall heretofore have transferred or bequeathed, or if any taluqdár or grantee or his heir or legatee shall hereafter transfer or bequeath to any person not being a taluqdár or grantee the whole or any portion of his estate, and such person would not have succeeded, according to the provisions of this Act, to the estate or to a portion thereof if the transferor or testator had died without having made the transfer and intestate, the transfer of and succession to the property so transferred or bequeathed shall be regulated by the rules which would have governed the transfer of and succession to such property, if the transferee or legatee had bought the same from a person not being a taluqdár or grantee.'

3. That, in section 24, lines 4 and 7, the words 'and concubines' be omitted, and that in lines 13 and 15 the words 'or concubine' be omitted.

4. That, in section 25, line 29, the following words be omitted:—

'where the said revenue is such as is mentioned in clause (*a*), (*b*), (*c*), or (*d*), be one-fourth of the amount to which a senior widow is entitled under such clause, and where the said revenue is such as is mentioned in clause (*e*), (*f*) or (*g*), it shall'

And that, at the end of section 25, for the words 'is entitled under such clause' the following be substituted: 'of the deceased would be entitled under the former part of this section.'

5. That, in section 27, line 3, the word 'and' be inserted before 'his,' and in line 5 the words 'and his concubines' be omitted.

6. That, in section 28, for clause (*b*), the following be substituted:—

'(*b*) in the case of a daughter or widow, till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenance.'"

As to the first amendment, he said the section as it stood enabled the Taluqdár to cause certain moveable property to devolve like heir-looms with his estate: the property so devolved to be enjoyed by the person in possession of the estate. But it was not the wish of the Taluqdárs nor the intention of the Select Committee that these concessions should extend to any person who might happen to get into possession of an estate under a mortgage or lease, and having no other right or interest whatever in the estate or property. The fact was that the omission of the words "otherwise than as a mortgagee or lessee" from the original Bill was a pure oversight, and it was the object of the amendment to replace them.

With regard to the second amendment, it was perhaps unnecessary for him to take up the valuable time of the Council in reading sections 14 and 15 as revised, seeing that they were rather lengthy.

It would be seen that, although the sections as they stood referred to transfers, they made no provision for bequests. The three previous sections provided for bequests, and all the five sections were part of the same chapter, which was headed—"Powers of Taluqdárs and grantees to transfer and bequeath," and all five sections should be taken and read together. The omission of the provision for bequests in the original sections was a mistake, which it was the object of this amendment to correct. For the rest, the amendment was in the interests of the Taluqdárs themselves, and had been made at their instance. At present if a Taluqdár were to transfer his estate to another Taluqdár who would not succeed if the transferor died intestate, the transferee would be regarded in the same light as an outsider, and the succession to the transferred property would be governed by the ordinary rules. What the Taluqdárs wished was that when the transferee was a brother Taluqdár the succession should be regulated by the rules provided in this Bill for the succession to taluqdárí estates; in other words, that the transferred property should be regarded as a portion of the transferee's taluqá. The amendment did but embody their wishes in this respect, and he trusted that it would be agreed to.

The third amendment and the fifth were the same. He was not altogether in a position to state how concubines came to be provided for in the Bill, but the word "concubine" was susceptible of a very broad interpretation, and might be held to include any dancing girl or prostitute who might be in the keeping of a Taluqdár at the time of his decease. The Taluqdárs most strongly objected to any provision being made by law for the maintenance of women of this stamp, and as ample provision had been made for the maintenance of legitimate widows of whatever degree SIR GEORGE COUPER trusted

the Council would agree to strike out all reference to concubines from the Bill.

The fourth amendment was to correct an anomaly which existed as the words stood. Under them a junior widow of the richer Taluqdárs would receive one-fourth of the amount to which the senior widows would be entitled; and a junior widow of a Taluqdár of the less wealthy classes would receive one-half the sum provided for a senior widow. The result would be that the junior widow of a poor man might receive a larger allowance, not only relatively but actually, than the junior widow of a richer Taluqdár. To illustrate his meaning, he would instance the case of a junior widow under clause (*d*) and a junior widow under clause (*e*). Under the former, a junior widow might be entitled to an allowance of 150 rupees per annum, and under the latter to 180 rupees, that was to say, that the widow of the poorer man might get 30 rupees more than the widow of the richer man. This anomaly had been explained to the Taluqdárs, and they fully concurred in the amendment under which *all* junior widows whatever the value of the estate might be, would receive one-half the amount provided for senior widows.

Clause (6) of section 28 of the Bill as it stood provided that the maintenance of a widow or daughter should continue until she married. What was proposed in substitution was that for clause (*b*) the following be substituted :—

"in the case of a daughter or widow, till she voluntarily leaves the household of the heir or legatee of the deceased, or would, according to the custom of the country, cease to be entitled to maintenance."

The object was to avoid all reference in the Bill to the marriage of widows This amendment had been introduced at the special and earnest request of the Taluqdárs themselves, perhaps he might say in deference to their prejudices. But even if this were the case, he trusted the Council would not think it inexpedient to accede to their wishes. The fact was that up to this very moment the re-marriage of a Hindú widow was unknown in Oudh, and such a proceeding would be regarded there with the strongest aversion. Whether such marriages should or should not be encouraged or acknowledged was not at present the question. The Taluqdárs said that, bearing in mind what their feelings and sentiments in this matter were known to be, the contingency of the re-marriage of a Hindú widow should not be expressly provided for in a Bill like this, which was not of a public nature and had been introduced at their request and in their interests; and as the amendment would throw no sort of difficulty in the way of the re-marriage of a widow, Hindú or other, if she thought fit to re-marry, he trusted that the Council would pass

the amendment, and thereby confer on the Taluqdárs what they would regard as a great boon.

The Hon'ble MR. COCKERELL said that amongst the amendments to be moved by Sir George Couper as entered in the notice which had been circulated, was the following :—

"That, in line 6 of section 24, after 'thereof,' the following words be inserted: 'otherwise than as mortgagee or lessee.'"

But this had been omitted by his Hon'ble friend Sir George Couper, as MR. COCKERELL understood, at the instance of the Hon'ble Mr. Strachey. It appeared to him (MR. COCKERELL) that the insertion of these words or something of similar import was desirable, for the Council would observe that in leaving section 24 as it now stood, the effect would be to saddle a mortgagee or lessee of a Taluqdár or Grantee's estate, upon the decease of such Taluqdár or Grantee, whilst the estate remained in the possession of the mortgagee or lessee, with the burden of maintaining, within the limits prescribed by section 25, certain relatives of the deceased so long as the mortgagee or lessee continued to hold such possession. MR. COCKERELL thought such a provision, apart from its anomalous character, was open to objection on the score of the obstruction which it would create to the transfer of the possession of the Taluqdár or Grantee's estate by mortgage or lease, and that it was in this way opposed to the principle of one of the received objects of the Bill, that is, the vesting in the Taluqdár or Grantee an absolute and unfettered right of alienation of his estates. On this account MR. COCKERELL deemed it right to urge the consideration of the effect of leaving section 24 as it now stood on the attention of the Council.

The Hon'ble MR. STRACHEY said that it appeared to him that the amendment to which the Hon'ble Mr. Cockerell objected was right as it stood. If the words now omitted were inserted, the section would not declare, in the case of a mortgage or lease of an estate being made, that any one would be liable to pay maintenance at all. MR. STRACHEY thought the matter could always be provided by a private arrangement between the parties, and it seemed to him that the objection of the Hon'ble Mr. Cockerell was of no weight.

The Hon'ble Sir George Couper's amendments were then put and agreed to.

The Hon'ble MR. COCKERELL then moved the insertion of the words "otherwise than as lessee" after the word "thereof" in line 6 of section 24. The object of the motion, he said, was to exempt lessees from the burden of being

compelled to provide for the maintenance of relatives of their deceased lessor; and as regards what the Hon'ble Mr. Strachey had said that if they were exempted the relatives referred to would be left unprovided for, MR. COCKERELL would observe that the burden of their maintenance would properly devolve on the person receiving the rent of the estate from the lessee in possession.

As regards the mortgagee, though MR. COCKERELL doubted the expediency of imposing on him this liability, still he was in some sense, in respect to his possession of the Taluqdár or Grantee's estate, in the same position as the vendee of such estate, and the Bill avowedly contemplated attaching this liability as a condition of the transfer of the estate by sale; but in the case of a lessee, where the full value of the property leased was given in the shape of rent, the attachment of such a condition to the mere fact of temporary possession of the estate, seemed wholly unreasonable and calculated to lead to untoward results.

The Hon'ble MR. MAINE said that if a man took a lease or mortgage of the whole estate of a Taluqdár (which was the case supposed), the lessee or mortgagee ought, in MR. MAINE'S opinion, to be the person primarily liable for the annuities. Indeed Mr. Cockerell's words would leave nobody liable when the whole estate was leased. The annuities were meant to be a real charge on the land, and it was not safe to make any person responsible in the first instance other than the person in actual receipt of the rents and profits. But the matter would be adjusted, as Mr. Strachey had remarked, by private arrangement, and moreover, the lessee would have his remedy against the lessor.

The Motion was put, and the Council divided:—

AYES.	NOES.
Hon'ble Mr. Bullen.	Hon'ble Mr. Cowie.
Hon'ble Mr. Shaw Stewart.	Hon'ble Mr. Gordon Forbes.
Hon'ble Mahárájá Sir Dig-Bijay Singh.	Hon'ble Rájá Shioráj Singh.
Hon'ble Sir George Couper.	Hon'ble Sir Richard Temple.
Hon'ble Mr. Cockerell.	Hon'ble Mr. Strachey.
Hon'ble Sir Henry Durand.	Hon'ble Mr. Maine.
Hon'ble the Lieutenant Governor.	Hon'ble Mr. Taylor.
	His Excellency the Commander-in-Chief.

So the motion was negatived.

The Hon'ble MR. MAINE moved that in section 11, clause 2, the words "transfer or" be omitted:

Also that in section 30, last line, the words "twenty-three" be substituted for "twenty-eight."

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved that the Bill as amended be passed. He said:—"SIR, I will not say anything more than that I think it a cause of great satisfaction that this Bill should be passed into law before Your Excellency's departure. The last important public act of Lord Canning was the bringing in of a Bill to give the force of law to the arrangements which he had made in Oudh. Similarly one of the last public acts of Your Excellency will be to give Your Excellency's assent to the Bill, the avowed object of which is to carry out and confirm the policy of Lord Canning, and which has been received by the Taluqdárs as the complete fulfilment of the engagements entered into by the British Government. I venture to assert that by the passing of this Bill Your Excellency will be remembered hereafter as one of the greatest and truest of the benefactors of the Taluqdárs of Oudh."

The Motion was put and agreed to.

ARTICLES OF WAR (NATIVE ARMY).

HIS EXCELLENCY THE COMMANDER-IN-CHIEF moved that the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Forces, be referred back to the Select Committee with instructions to report in a month. He said that since he had presented the Report of the Committee he had received notice from two very important quarters of what were considered further amendments in the Bill. Those quarters were the Government of Madras and the Judge Advocate General of the Army. And a telegram had also been received from the Government of Bombay expressing a wish that the passing of the Bill should be deferred till certain points had been stated by the Commander-in-Chief of that Presidency. His Excellency did not know what those points were, but it was only right that, whatever they were, they should receive full consideration from the Committee.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY moved that the Hon'ble Rájá Shioráj Singh and the Hon'ble Mahárájá Sir Dig-Bijay Singh be added to the Select

Committee on the Bill to facilitate the improvement of land in the North-Western Provinces.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to provide facilities for obtaining the evidence of prisoners and for service of process upon them—The Hon'ble Mr. Maine, the Hon'ble Sir George Couper, and the Hon'ble Messrs. Gordon Forbes and Shaw Stewart and the mover.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF then said :—" SIR, I take this opportunity on behalf of this Council to express to Your Excellency the deep respect which the Council feel towards Your Excellency. I have not been authorized by any Member of the Council to express their gratitude for the unvarying kindness and courtesy bestowed on them by Your Excellency—I have not had the opportunity of consulting with the Members before addressing Your Excellency—but I am sure that I express the feeling of every Member of the Council when I say that they will never forget the courtesy and the perfect impartiality which they have always received at Your Excellency's hands."

HIS EXCELLENCY THE PRESIDENT said :—" Sir William Mansfield and Gentlemen, I thank you heartily for your consideration and kindness towards me. As the President of this Council I leave India with regret ; but for some time I have felt that broken health and long services are beginning to tell on me, and that it is time that I should relinquish the cares of State and place them in the hands of the coming Governor General."

The Council then adjourned till Friday the 22nd January 1869.

CALCUTTA,
The 11th January 1869.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

Government Central Press.—No. 2.0 L. D.—31-1-82.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Government House on Friday, the 22nd January 1869.

The Council adjourned till the 29th January 1869.

CALCUTTA,
The 22*nd January* 1869.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (*Legislative.*)

Government of India Central Printing Office.—No. 170 L. D.—4-7-84.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Government House on Friday, the 29th January 1869.

The Council adjourned till the 5th February 1869.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative.)

CALCUTTA :
The 29th January 1869.

G. I. C. P. O.—No. 674 L. D.—3-3-1908.—00.—C. I. W.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 5th February 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.

The Hon'ble G. Noble Taylor.

Major-General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C. S. I.

The Hon'ble Sir George Couper, Bart., C. B.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpúr.

The Hon'ble G. S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. N. Bullen.

JUSTICES OF THE PEACE BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill for the appointment of Justices of the Peace.

DIVORCE BILL.

The Hon'ble MR. MAINE also presented the Report of the Select Committee on the Bill to amend the Law relating to Divorce and Matrimonial Causes in India.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble SIR GEORGE COUPER presented the Report of the Select Committee on the Bill for the maintenance of the Rural Police in the North-Western Provinces.

CIVIL COURTS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART introduced the Bill to consolidate and amend the Law relating to the District and Subordinate Civil Courts in the Presidency of Bombay, and moved that it be referred to a Select Committee with instructions to report in a month. He said that the object of the Bill was stated at the time he obtained leave for its introduction. The object was, in substance, very nearly the same as that of Act XVI of 1868, which consolidated and amended the law relating to Principal Sadr Amíns, Sadr Amíns and Munsifs in Bengal. He would now very briefly go through the Bill and explain the principal alterations proposed. The second section proposed the repeal of a number of enactments, which would thus be removed from the Statute Book. In the sixth section an alteration was proposed by which a District Judge would be enabled, under the orders of the High Court, to hold his Court at any town in his District. The necessity of that alteration had been for some time felt, and it would add much to the convenience of suitors. By the twelfth section the Governor of Bombay in Council would, subject to the control of the Governor General of India in Council, be empowered to appoint Joint Judges in any District where it was found necessary in consequence of the state of work : at present each appointment of a Joint Judge must receive the previous sanction of the Government of India; but it was now proposed, subject to any instructions which the Government of India might issue, to empower the Government of Bombay to appoint Joint Judges from time to time as might be found necessary.

The next alteration would be found in section 22. There were at present in the Bombay Presidency three grades of subordinate Civil Judges, Principal Sadr Amíns, Sadr Amíns and Munsifs; it was proposed that there should in future be two grades of Subordinate Judges, namely, Subordinate Judges of the first and second classes. The appointment of Principal Sadr Amíns is now vested in the Government, of Sadr Amíns in the High Court, and of Munsifs in the Zila Judges. It was proposed by the Bill that the appointment of all Subordinate Judges should be vested in the Government. On this point the opinion of the Government of Bombay was adverse to that of the High Court. The High Court, as at present constituted, was of opinion that the nomination of all Subordinate Judges should rest with the High Court; the Government, on the contrary, considered that the duty of appointing Subordinate Judges naturally pertained to the Executive Government of the presidency, and it was fortified in that view by the opinion of the High Court as constituted in 1864, the Judges of which advised the Government of Bombay that the appointment of Subordinate Judges had better be vested in the Executive Government. The views of the High Court and the Government of Bombay would be laid

in extenso before the Select Committee to which the Bill would be referred, and the Government of Bombay had acquiesced in the propriety of leaving the matter to the consideration of this Council, and were willing to accept any amendment which the Select Committee might think proper to recommend. It would, however, be noticed that the power of the Government would be very much limited by the second clause of section 22, which provided that no one should be so appointed who had not practised for five years as an Advocate of the High Court in India or as a Vakíl in the High Court of Judicature at Bombay, or who had not taken the degree of Bachelor of Laws in the University of Bombay, or who was not qualified for the duties of a Subordinate Judge according to such tests as might for the time being be prescribed by the High Court. It would therefore be within the competency of the High Court to secure the appointment of proper persons by fixing the scale of examination on a proper footing. In this respect the present Bill differed from that enacted last Session for Bengal, which provided that the rules for examination should be prescribed by the Government, under the sanction of the Government of India.

The next alteration was in section 23, which provided that Subordinate Judges might hold their Courts at more places than one within the local limits of their jurisdiction. The object of the alteration was to meet the case of large and sparsely populated Districts, where it was not worth while to create more than one Subordinate Judgeship, and it would enable the Subordinate Judge to hold his Court from time to time in different parts of the District, and thus make his Court easily accessible to the people.

In the matter of jurisdiction the recommendations embodied in the Bill followed very much the existing law. Subordinate Judges of the first class would have jurisdiction in all cases wherein the subject-matter of the suit did not exceed in amount or value 10,000 rupees; and Subordinate Judges of the second class would have jurisdiction up to 5,000 rupees. In Bengal, the jurisdiction of a Subordinate Judge of the first class was unlimited, and the jurisdiction of a Subordinate Judge of the second class was limited to suits not exceeding in amount or value 1,000 rupees. There had always been a great difference of practice in this respect between the Bengal and Bombay Presidencies.

In the twenty-sixth section there was a slight alteration. By the law as it at present stood, Subordinate Judges of the first class might be vested with the power of appeal in suits up to 100 rupees; it was proposed to raise their appellate jurisdiction to suits of the value of 200 rupees.

These were the only points on which the Bill proposed to alter the existing law.

There was one section which had been accidentally omitted from the Bill. In the draft Bill sent up by the Bombay Government, section 20 re-enacted the law contained in section 43, Regulation II of 1827: it was a point on which the procedure of the Bombay Presidency was somewhat peculiar; it provided that no Subordinate Judge should hear any suit in which the Government or any officer on behalf of the Government was the defendant. That had been the law since 1827, and it was never intended either by the Government of Bombay or the High Court that the law should be altered. By inadvertence, however, in re-arranging the draft Bill sent up from Bombay, the section containing that provision of the law had been omitted. MR. SHAW STEWART would bring the subject to the particular attention of the Select Committee with a view to the section being introduced.

The Hon'ble MR. MAINE said he was sure that the Council would at once refer his hon'ble friend's Bill to a Select Committee. The Bill was upon principle within the competence of the Bombay Legislature: it related exclusively to Bombay matters, and in regard to it the experience of gentlemen accustomed to this side of India was more likely to mislead than to guide. The learned Advocate General of Bombay had explained how it came before the Supreme Legislature. The Statute of 1861 establishing the High Courts, and the Letters Patent issued under it, taken in connection with the 'Indian Councils' Act, reserved exclusively to the Governor General's Council the power of modifying or abridging the jurisdiction of the High Courts. That jurisdiction would be slightly affected by the present Bill, which therefore was necessarily submitted to this Council. Under those circumstances few points need be brought to the attention of the Council. MR. MAINE would observe that in section 12 the words 'general control' were ambiguous. No words had caused greater uncertainty in Act V of 1861, the Police Act. MR. MAINE understood the wish of the Bombay Government and of his hon'ble friend to be that the financial control of the Government of India should be maintained. His hon'ble friend would correct him if, in what he was about to say, he misdescribed the proposal. There was to be a fixed establishment of District Judges corresponding to the number of districts in the Regulation Provinces of the Presidency, and in addition to this there was to be (so to speak) a Judge unattached. This Judge was to be removed from one district to another according as the state of judicial business should require. He was not to be appointed without the consent of the Government of India. But it was desired to avoid a reference to that Govern-

ment every time he was moved from one district to another. If that were what was intended, it would perhaps be better to describe the system more exactly, and to provide that the Joint Judge should in the first instance be appointed to a district with the previous sanction of the Governor General in Council, and then should be moved with the same powers to other districts until the Government of India should otherwise order.

Section 22, and the observations just made upon it by his hon'ble friend, raised the important question of patronage. The Government of Bombay, in one of the papers which had been circulated, had remarked that the subject had been much discussed by the Governor General's Council at its last sittings in Calcutta, and that the discussion had ended in a compromise which in effect continued the existing law. MR. MAINE quite concurred with the Government of Bombay in thinking that, for the reasons which it had assigned, that solution of the question was not possible in the case of Bombay. Hence, we had the Executive Government of Bombay claiming the whole of the judicial patronage on one side, and the High Court, on the other, alleging that it should belong to the Court. MR. MAINE was far from denying that opportunities of strengthening the Executive Government in India should be taken when they fairly presented themselves; and though he might not have used the precise words of the Government of Bombay when it said that judicial patronage naturally pertained to the Executive, he allowed that the theory which prevailed in Western Europe was much to that effect. He apprehended, however, that the foundation of the theory was an assumption that the Executive Government was provided with something like a department of justice, which furnished it with the means of guaging the claims of candidates for promotion. That was not untrue even of England, for the Judges were practically appointed by the Lord Chancellor. He, indeed, might not in the strict sense of the word have a department under him; but then English Judges were taken from the Bar, and the rise and fall of professional reputation supplied the proper criterion of selection. In France, which bore a much closer resemblance to India, not only was there a Minister at the head of a department of justice, but he had in every Court in the country a Deputy, an Attorney of the Empire or an Advocate General, who regularly reported to him. The question then arose, was there any department of justice in India except the High Court? The truth was that the High Courts had inherited through the Sadr Court a good many administrative and executive functions from the time when the lines between executive, legislative and judicial powers were not as strongly drawn in India as they are now. It was in virtue of this administrative character that they enjoyed their patronage. MR. MAINE perceived the Government of

Bombay was quite aware of the difficulty. For, if he understood its letter rightly, it proposed to appoint provisionally on the nomination of the High Court, until such time as a Judicial Commissioner was attached to it. There were, however, great difficulties about the appointment of such a functionary. Not the least of them was that a proposal to create the office in Bengal was made by the Lieutenant Governor in 1863, and supported by the Government of India. But the Secretary of State vetoed it, assigning as a reason that he did not see why the existing relations of the High Court and the Executive Government should not continue. There were other not inconsiderable difficulties inherent in the plan. Might not the consequences be serious if the judicial capacity and knowledge of the Commissioner were not on a par with the highest judicial knowledge and capacity of the High Court? The Judicial Commissioner, as MR. MAINE understood, was to take off from the High Court its administrative and non-judicial functions, and among these would be that power of issuing circulars to the Subordinate Courts for the correction of errors in principle or practice, which was now usefully exercised, and also, it might be supposed, the duty of going on circuit and rebuking errors of system found to exist in the Mofussil. But it was vain to deny that to affect to correct the errors of Judges, or to rebuke their faults, was to lay down law. Might there not be danger of scandal if the highest Court of Appeal ultimately questioned that law or set it aside, and if decisions, which in effect would be rendered upon the instructions of Government, were reversed at the expense of the litigants? The subject was undoubtedly one of much difficulty, and for some time to come the Government would probably have to depend on the advice and assistance of the High Court. But MR. MAINE observed that his hon'ble friend's Bill did not throw upon the Court the duty of tendering such advice. MR. MAINE did not of course mean to say that the learned judges would really decline to give it. But, on the other hand, it was certain that the more of these administrative functions which you took away from the High Court, the greater you made the tendency of the Court to confine itself to its purely judicial duties. It appeared that the Bombay Government did not wish to be bound by the nomination of the High Court, because it might occasionally wish to place a person who had served in the non-regulation provinces, in a judicial office in the Regulation Districts. Mr. MAINE would suggest for the consideration of his hon'ble friend whether, after the judicial patronage had been in the first instance assigned to the Executive Government, there might not be a provision that, if the Government did not appoint within a certain number of days or weeks, the High Court should appoint. That would enable the Government to put in any person of whose claims it had a clear opinion, but if it considered that the Court had better materials

for a judgment than itself, to throw on the Court the legal obligation of appointment. Such, that is to say, would be the effect on paper; but the practical effect would be that there would be a complete understanding between the Government and the Court as to the mode of selection, and as to the persons best fitted to be selected.

MR. MAINE had only further to observe that one of the Judges of the Bombay High Court, Mr. Justice Tucker, had, if MR. MAINE rightly understood him, appealed to the Council to consider a plan of his own before it continued the existing organization of the Mofussil Courts. That plan bore a considerable resemblance to some proposals which had been published under the name of a gentleman who had formerly been Chief Justice of Bombay and was now a Member of the Council of India, Sir Erskine Perry. It was thus described by Mr. Tucker:—

"It should be considered whether an improvement might not be made in the constitution of these Courts by the amalgamation of the existing Courts of District and Assistant District Judges with the Courts of Small Causes and of Principal Sadr Amíns at each Head Quarter Station, and the establishment of a single central Court in each District composed of three or more associate Judges, European and Native, with co-ordinate powers and exercising original and appellate jurisdiction.

A tribunal thus constituted could discharge by means of divisional benches all the diversified functions of the Courts which it would supersede, and the creation of a principal Court so composed, in each of the Districts of this presidency, would remove many of the admitted evils and anomalies of the present system. Amongst other advantages it would afford an opportunity for the employment of the Junior Judges, who belonged to the covenanted Civil Service, in the trial of original suits—a great desideratum at present; and it would elevate the position of the Judges, European and Native, who might be selected outside the covenanted Civil Service, and thus open an honourable career for Native talent. A reform of this character might be introduced without any very considerable increase of expenditure, and it could scarcely fail to be productive of public benefit. It will enable Government to secure for judicial offices in the mofussil the services of successful pleaders in the High Court and also of the new class of Advocates who will have taken the degree of Bachelor of Laws in the Bombay University—men who will not, except in rare instances, accept a Subordinate Judgeship, whatever may be the rate of pay which may be ultimately fixed for these appointments."

These two projects of Sir Erskine Perry and Mr. Tucker would no doubt require to be considerably modified in application, but MR. MAINE had long thought that the reform of the lower Appellate Courts, which no doubt was much needed, would ultimately take something like this shape. Mr. Justice Tucker had, however, not observed or not stated that the change could only be carried out by Act of Parliament. Statute 24 & 25 Vic., cap. 54 reserved the offices

mentioned in the first two classes of the second head of the schedule to members of the covenanted Civil Service, except on conditions that, practically, could not be fulfilled. The better opinion would seem to be that this enactment prohibited the Indian Legislature from abolishing the present District Civil Courts. But at all events it would prevent the Government from placing in any Court substituted for District Courts the class of persons contemplated by Mr. Tucker. That being the state of the law, MR. MAINE did not think that these proposals could at present be discussed in this country with profit.

The Hon'ble MR. SHAW STEWART said that, with reference to the question put to him by the Hon'ble Mr. Maine, he would give the best explanation in his power. As regards the twelfth section it was the intention of the Bill that the financial control of the Government of India should be strictly maintained. In paragraph six of the letter from the Government of Bombay the circumstances under which this provision was proposed were stated at length. The present law, Act XXIX of 1845, required the consent of the Government of India to the appointment of a Joint Judge. Those words were construed by the High Court to mean that the consent should be given before each and every such appointment was made; it had therefore been found impossible to transfer a Joint Judge, even when the sanction to his appointment had been received, from one jurisdiction to another. MR. SHAW STEWART thought that the proposal of the Hon'ble Mr. Maine would have the effect of giving to the Government of Bombay all that was required to enable the Government to move a Joint Judge from one district to another.

As regards the twenty-second section of the Bill, MR. SHAW STEWART thought that the Hon'ble Mr. Maine had somewhat misunderstood the views of the Government of Bombay. As MR. SHAW STEWART understood it, the Bombay Government preferred to have it distinctly stated that the Government was to have the appointment of Subordinate Judges. The words referred to by the Hon'ble Mr. Maine were as follows :—

"Although, however, His Excellency in Council thinks that it is necessary for the Government to retain the power of appointing to the higher class, he is yet willing, in the absence of a responsible adviser such as a Judicial Commissioner, to accept the nominations of the High Court to the higher grade appointments within the second class."

MR. SHAW STEWART understood that to mean that, if this Council considered that the High Court ought to have a share of the patronage, the Government of Bombay was willing to accept an alteration so as to allow the High Court to nominate, and the Government to appoint, Subordinate Judges of the lower grade, the Government having absolute power of appointment in the

case of Subordinate Judges of the higher class, which was now the law in Bengal under Act XVI of 1868. The Government of Bombay, as he understood it, would prefer the Act to stand as in the Bill; but if it was considered that the High Court ought to have the power of appointment, the Government was willing to have the alteration made: if made, it would then clearly be stated to be the duty of the High Court to nominate, and no such difficulty, as that anticipated of the High Court refusing to nominate, could occur.

He regretted that he was not able to speak as to the appointment of a Judicial Commissioner; he was not aware how that matter stood, or if the Government of Bombay had any prospect or intention of making such an appointment. If, however, the alteration referred to above were made, it would probably be necessary to alter the law as soon as a Judicial Commissioner was appointed, and to let the nomination come from the Judicial Commissioner instead of from the High Court.

The Hon'ble SIR RICHARD TEMPLE said that he noted with satisfaction the assurance given by the Hon'ble Mr. Shaw Stewart that there was no intention in the Bill of at all weakening the financial control of the Government of India. He hoped that attention would continue to be given to this in Select Committee. It was also satisfactory to see that the Bill clearly affirmed the authority of the Local Government in respect to the patronage of appointments. For with all deference to what had fallen from the Hon'ble and learned Member, Mr. Maine, and with all respect to the several High Courts, SIR RICHARD TEMPLE believed it to be essential that the hands of the Executive Government should be kept strong as much in regard to judicial as all other patronage; and he hoped that nothing would be enacted to materially impair the power of the Local Government in this important particular.

The Hon'ble SIR HENRY DURAND said that the Hon'ble Mr. Shaw Stewart had, by an explanation which he had given him on the subject, removed a doubt which existed in SIR HENRY DURAND'S mind with reference to certain sections of the Bill which empowered the High Court to suspend Judicial Officers without the authority of Government. He had learnt from the Hon'ble Mr. Shaw Stewart that Political Officers exercising judicial functions under the Bombay Government, and those of Justices of the Peace, would not be affected by the provisions of the Bill. To SIR HENRY DURAND this assurance that the sections to which he had referred did not bring those officers under the direct action of the High Court of Bombay was very satisfactory, for he could conceive circumstances under which it would be extremely inconvenient that Political Officers who exercised high judicial functions should, at the will of the High Court, and

without the sanction of the Government of Bombay, be subject to the provisions of the sections to which he had alluded ; but with the assurance of the Hon'ble Mr. Shaw Stewart that the sections did not touch such officers, SIR HENRY DURAND had nothing to observe but that the information removed the objection which he might otherwise have had to the sections.

The Motion was put and agreed to.

EMIGRATION OF COOLIES BILL.

The Hon'ble MR. STRACHEY moved that the Hon'ble Mr. Gordon Forbes be added to the Select Committee on the Bill to amend the Law relating to the emigration of Native labourers.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay—the Hon'ble Mr. Maine, the Hon'ble Sir Richard Temple, the Hon'ble Messrs. Cockerell, Gordon Forbes and the Mover.

The Council adjourned till the 12th February 1869.

WHITLEY STOKES,
Asst. Secy. to the Govt. of India,
Home Department (Legislative).

CALCUTTA,
The 5th February 1869.

Office Supdt. Govt. Printing—No. 10149 L. C.—8-2-69—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations, under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 12th February 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

His Excellency the Commander-in-Chief, G.C.S.I., K.C.B.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K.C.S.I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C.S.I.

The Hon'ble Sir George Couper, BART., C.B.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahadur, K.C.S.I., of Balrámpur.

The Hon'ble G. S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

JUSTICES OF THE PEACE BILL.

The Hon'ble MR MAINE moved that the Report of the Select Committee on the Bill for the appointment of Justices of the Peace be taken into consideration. He said that this Bill was originally necessitated by an Act of Parliament passed in 1865. The Statute 28 Vic., c. 15, sec. 3 empowered the Governor General in Council to re-distribute, by notification, various jurisdictions of the High Courts, and in particular to alter the local limits of the original criminal jurisdiction which they exercise over European British subjects. The Justices of the Peace to whom the measure referred had no functions outside the presidency towns except those of dealing with charges against European British subjects, of fining them in certain cases and committing them for trial in others. When the notification had been issued under the Statute of 1865, a question arose whether a Justice of the Peace could commit to any High Court

except the one under whose seal his commission issued. The learned Judges differed on the point, and legislation became imperative. As the Bill was originally framed, it merely removed this particular difficulty, and enabled the High Courts to commission any Justice of the Peace having power of commitment to such Courts. The Judges, however, of two of these Courts on receiving the Bill, asked why they should not be relieved from the burden of issuing commissions to Justices of the Peace? They had no option in the matter; they were obliged to obey the requisition of the Government, and the duty seemed an unjustifiable waste of their time. The Select Committee could not but adopt such a suggestion emanating from such a quarter, and the Bill had been amended in that sense. MR. MAINE would go through the sections in connection with his amendments, which had all been assented to by the Committee. It would be observed that the third section enabled the Governor General in Council to appoint Justices of the Peace for the whole of British India. There was no intention (as would be inferred from the composition of the Committee) to confer on the Supreme Government the power of usurping any of the legitimate functions of the Local Governments. But the Council would see that under the section of the Act of Parliament to which he had referred, the local limits of the original criminal jurisdiction of the High Courts might be constantly shifting. For example, European British subjects were committed from certain portions of the Central Provinces to the High Court of Bombay. But as the railway from Jubbulpúr advanced westward, it might be more convenient to have them committed to the High Court of the North-Western Provinces. The Council would at once perceive the great convenience there would be in having an authority whose appointments would be independent of all limits and would be valid all over India. The words at the end of the first clause of the section MR. MAINE proposed to omit, and to embody their substance in a separate section. The objection had been taken by a high authority, that the Bill, as it stood, had an air of legislating for the Native States, which was not within the competence of the Council whose legislative powers as to such States were confined to British servants of the Crown and European British subjects. By the fourth section the Governor General in Council had a power collateral to that of the Local Government of appointing Justices of the Peace for Calcutta. This was done on account of the special relation of the Government of India to Calcutta. But MR. MAINE apprehended that the power would be seldom exercised. The fifth section merely conferred on the Justices of the Peace to be appointed under the Act all the powers and authorities now belonging to the present Justices of the Peace. But he proposed to alter the words "make commitments of" into the words "have power to commit for trial."

After section 5 MR. MAINE proposed to introduce the new section relating to the Native States. The Council was not competent to legislate formally for these States, but it could empower Justices of the Peace appointed for other parts of India to deal with charges made in those States against certain classes of persons. The Justices thus acting in Native States were to be servants of Government, for it was desirable that none but Political Officers should exercise these functions. The reference to Christian subjects of Her Majesty in the last part of the section was introduced, because the Act of Parliament of 1865 made provision for such Christian subjects being placed under the criminal jurisdiction of the High Courts.

The next two sections related to the oaths which Justices of the Peace were to take. They were left in the Bill by a majority of the Committee, and MR. MAINE was afraid he was the only dissentient. He did not, however, intend to move to omit them, because he did not think the question of very great importance, and he admitted that the arguments were nearly evenly balanced. MR. MAINE thought that too many of such oaths were taken in this country; and, as the characteristic function of a Justice of the Peace beyond the Presidency Towns was to deal with Europeans, who (he was afraid) were too often European vagabonds, there did not seem any reason for imposing any additional burden on their consciences. On the other hand, there was the analogy of the law at home; and it must be allowed that the chief reason for maintaining the institution of separate Justices of the Peace was that it might be the nucleus of a better system for disposing of the minor crimes of European British subjects. If the Justices acquired such functions, it might not be unreasonable that they should take fresh oaths. MR. MAINE, however, did not presume that his hon'ble friends wished the existing Justices to be sworn over again, and therefore "no such person" in section 7 must be altered into "no person other than a Justice of the Peace now acting under a commission."

The next section, of which the language was taken from the old law, must be altered since it appeared that some of the Local Governments had now no Home Office, its duties having probably been distributed among other Departments. The last section of the Bill merely conferred on existing Justices the same powers which they would enjoy if appointed under the new law. But on the principle of the omission in section 3, the last words of the first clause must be omitted "and for the dominions of the said Princes and States."

MR. MAINE trusted that the Council would pass the Bill into law, and that it would be found to substitute a simple and convenient system, for one which

was extremely cumbrous, and for which little could be said except that it existed.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved the following amendments :—

1. That, in section 3, the words 'and the dominions of Princes and States in India in alliance with Her Majesty' be omitted.

2. That, in section 5, line 4, the words 'full power and' be omitted, and that, for the words 'make commitments of,' line 5, the words 'have power to commit for trial' be substituted.

3. That, after section 5, the following section be added :—

'6. All persons being servants of Government appointed by the Governor General in Council to act as Justices of the Peace for the whole of British India,

and all persons being servants of Government appointed by a Local Government to act as Justices of the Peace for the territories subject to such Government other than the towns aforesaid,

shall, so far as regards European British and Christian subjects of Her Majesty within the dominions of Princes and States in India in alliance with Her Majesty, have power to act as Justices of the Peace and to commit such subjects for trial according to law.'

And that the numbering of the subsequent sections be altered.

4. That, in section 6, line 1, for the words 'no such person,' the following be substituted :—

'no person other than a person now acting as a Justice of the Peace under a commission.'

5. That, for section 7, the following section be substituted :—

'The subscriptions of such persons to the said declarations shall be deposited with and kept by such officer as the Governor General in Council or the Local Government (as the case may be) shall from time to time appoint.'

6. That, in section 9, lines 9 and 10, the following words be omitted :—

"and for the dominions of the said Princes and States."

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble SIR GEORGE COUPER asked leave to postpone his motion that the Report of the Select Committee on the Bill for the maintenance of the Rural Police in the North-Western Provinces be taken into consideration.

Leave was granted.

IMPROVEMENT OF LAND (N. W. P.) BILL.

The Hon'ble MR. STRACHEY moved that His Excellency the Commander-in-Chief, the Hon'ble Mr. Taylor, and the Hon'ble Sir George Couper be added to the Select Committee on the Bill to facilitate the improvement of land in the North-Western Provinces.

The Motion was put and agreed to.

The Council adjourned till the 19th February 1869.

WHITLEY STOKES,

Secy. to the Council of the Governor-General for making Laws and Regulations.

CALCUTTA,
The 12th February 1869.

Government of India Central Printing Office.—No. 172 L D.—11-7-8 4.—70.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 19th February 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C. S. I.

The Hon'ble Sir George Couper, Bart., C. B.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpúr.

The Hon'ble G. S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. N. Bullen.

VILLAGE POLICE (N. W. P.) BILL.

The Hon'ble SIR GEORGE COUPER moved that the Report of the Select Committee on the Bill for the maintenance of the Rural Police in the North-Western Provinces, be taken into consideration. He said that, for the purposes of this Bill, landowners in the North-Western Provinces might be divided broadly into two classes; landowners who paid revenue to Government and landowners who held their lands rent-free. By far the greater majority of landowners belonged to the first of these classes. At the time of making a settlement of the land-revenue with landowners paying revenue to Government, a percentage on their rent was fixed in discharge of their obligation to maintain the Rural Police. In 1855 this cess was fixed at $2\frac{3}{4}$ per cent. on their rent; but

the Government had no inherent power to levy this cess from landowners not paying revenue to Government, and therefore Act II of 1865 was passed to enable the Government to levy a cess of $2\frac{3}{4}$ per cent. on the amount which they would have had to pay if they had not been holding their lands rent-free. For the fact of their holding their lands rent-free was clearly no reason why they should be exempt from the payment of Police charges imposed on the less fortunate class of landowners.

Since then it had been found necessary, in the case of landowners paying revenue to Government, to raise this cess to $7\frac{3}{4}$ per cent. on their rent; but as the amount to be paid by landowners not paying revenue to Government was fixed by Act II of 1865 at $2\frac{3}{4}$ per cent. only, on what SIR GEORGE COUPER might call their estimated rent, it could not be raised to the amount now levied from landowners paying revenue to Government, namely, to $7\frac{3}{4}$ per cent.

The object of the Bill, therefore, was to place both classes of landowners on precisely the same footing in this respect. If it were found necessary hereafter to raise the percentage on the rent of landowners paying revenue to Government, the percentage on the estimated rent of landowners not paying revenue to Government would be proportionately raised. If, on the other hand, it were found possible to reduce the percentage in the case of landowners paying revenue to Government, the percentage to be paid by landowners not paying revenue to Government would be reduced proportionately.

The opportunity had been taken to make one or two amendments in Act II of 1855. The fourth section of that Act, which was taken from still older enactments, provided that landowners shall furnish certain information required for the purposes of the Act in connection with this cess, and on failure to do so, the landowner was put, so to speak, beyond the pale of the law; for, on the default of a tenant, he was precluded from distraining his crop, from suing him in the Civil Courts, and from taking any other measures for the enforcement of his rights. Instead of this legal ostracism, it had been thought better to provide that, if the landowner refused to give the information required by the law, he should be liable to a specific fine, the amount of such fine to be devoted to the purposes of the Act.

Section 11 of Act II of 1865, was to the following effect:—

"Every proprietor or other person in whom the right of nomination of village watchmen is vested, shall nominate a fit and proper person within fifteen days of the occurrence of any vacancy in the office of watchman on his estate; and the person so nominated shall, after due

enquiry, be appointed or rejected by the Magistrate of the District at his discretion, or by any officer authorized by him in that behalf. In default of a nomination within fifteen days of the occurrence of a vacancy or of the rejection of a nominee, the proprietor or other person in whom the right of nomination is vested shall be held to be guilty of disobedience to lawful authority, and shall be liable, by order of the Magistrate, to a fine not exceeding rupees fifty, and in default of payment to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate of the District shall proceed to appoint a person to the vacancy."

It had been thought sufficient, for all practical purposes, to enact that on the neglect of the landowner to make a nomination, the Magistrate should proceed to fill up the vacancy. So much therefore of this section, as provided a specific punishment for failure to nominate on the part of the landowner, had been struck out of the Bill. For the rest the Bill was merely an embodiment of Act II of 1865 and Act II of 1866, both of which it repealed.

There was a matter of detail in which the Select Committee had thought it right to make a slight alteration in the Bill as it originally stood. It was provided in the nineteenth section that, in the event of the nomination of a village watchman by the landowner being rejected, the Magistrate should at once fill up the vacancy. The Select Committee thought this tantamount to vesting all such appointments bodily in the hands of the Magistrate, who had only to reject the landowner's nominee to appoint whom he would. It was therefore provided that, in the event of his first nomination being rejected, the landowner might make a second nomination within fifteen days.

The Motion was put and agreed to.

The Hon'ble SIR GEORGE COUPER also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ARTICLES OF WAR BILL.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF presented the final Report of the Select Committee on the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces.

POLICE SUPERANNUATION FUNDS' BILL.

The Hon'ble SIR RICHARD TEMPLE, in moving for leave to introduce a Bill to abolish the Police Superannuation Funds, said that, as the Council were aware, the various Police Forces in India had certain deductions made from the pay of the men, who became thereby entitled to a certain scale of pensions. This arrangement had been found, however, to give an immense deal of trouble

in the making up of the accounts of every man, and was otherwise inconvenient. It was now proposed to abolish these Funds and to guarantee on behalf of the Government the pensions which the men would otherwise have received; they would thereby get greater security for their pensions, and would regard the measure as quite satisfactory; and, on the other hand, the financial convenience of the Police Department would be consulted. The pay of the men would have to be revised so as to bring out approximately an amount equal to the nett amount which they now received after the present deductions. He had, therefore, with the full concurrence of his Hon'ble colleague in charge of the Home Department, brought in this Bill.

The Motion was put and agreed to.

EMIGRATION OF COOLIES' BILL.

The Hon'ble MR. GORDON FORBES presented the Report of the Select Committee on the Bill to amend the law relating to the Emigration of Native Labourers.

The Council adjourned till the 26th February 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. General for making Laws and Regulations.

CALCUTTA,
The 19th February 1869.

Office Supdt Govt. Printing.—No. 10588 L. C.—20-2-69.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 26th February 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C. S. I.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádúr, K. C. S. I., of Balrámpúr.

The Hon'ble G. S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. N. Bullen.

DIVORCE BILL.

The Honble MR. MAINE moved that the Report of the Select Committee on the Bill to amend the law relating to Divorce and Matrimonial Causes in India be taken into consideration. He said:—"This measure is obviously one of great social importance; but I do not think I need trouble the Council at any wearisome length with an analysis or description of its provisions. It is substantially a consolidation measure. It puts together the English Statute-law on the subject in a more orderly form, and, I trust, in clearer language, and it incorporates the principal recent decisions of the Divorce Court. But in the main its principles are those of the statutes regulating the jurisdiction of the English Court of Divorce and Matrimonial Causes. I shall therefore probably discharge my duty to the Council by calling its attention to the points in which

the Bill differs from the English law, and to the provisions in it which are specially characteristic of India.

The first important section which requires remark is the second. In connection with it, I will take leave to remind the Council of the history of the Bill. It has been seven years before the Council of the Governor General. On examining the parliamentary debates upon the English Divorce Act, I find it was then distinctly contemplated that a measure of divorce relating to India should be passed either in India or at Home. The Secretary of State appears to have preferred Indian legislation, and directed the Government of India to submit to this Council a Bill corresponding with the English Act. It was in Sir H. Harington's hands when I came out here in 1862, and he transferred it to me. But I did not carry it through more than a single stage on account of the doubts which I felt myself, and which were strongly stated by some of the Judges, as to the power of this legislature to enable the Courts to decree divorces of persons married in England which the English Courts would recognise. Though the matter is somewhat technical, I must attempt to explain to the Council what the legal difficulties were. At that time the opinions of lawyers were much divided as to the relative authority to be attached to two cases which have become famous in connection with this subject. *Lolley's case*, which is considerably the older of the two, was as follows :—Lolley was a man who married a wife in England and took her to Scotland, where he obtained, or rather forced her to obtain, a divorce from the Scottish Consistorial Court on the ground of his adultery. He then returned to England and married again. Afterwards he was indicted for bigamy and convicted, the point whether he had been legally divorced being at the same time reserved for the consideration of the Judges. The Judges decided that the conviction must stand, in terms which were long considered to establish that a foreign Court could not dissolve a marriage that had been solemnized in England. Long afterwards, in 1835, the House of Lords decided the case of *Warrender* v. *Warrender*. Here the appellant and respondent, Sir George and Lady Warrender, had both a Scottish domicile, but the marriage had been celebrated in England and the adultery was alleged to have been committed in France. Lord Brougham gave judgment in terms which would appear to sanction the rule which seems to be the general rule of Private International Law, that personal status follows domicile, and that the question whether a man is a minor, or a married man, or a divorced man, is to be determined by the law of the country in which he is domiciled. Lord Brougham, who had been Counsel for Lolley, spoke in *Warrender v. Warrender* with much doubt of the authority of *Lolley's case*, and it might almost be considered to have been overruled, if it had not

been for the observations of Lord Lyndhurst, who followed Lord Brougham, and who, while agreeing with the decision of the House, stated that he did not intend in any way thereby to throw discredit on the older decision. Hence lawyers had to decide between two decisions which are certainly difficult to reconcile. The Government of Lord Elgin wrote to the Secretary of State, who admitted the weight of the doubts which had been felt in India, and stated that Her Majesty's Government would bring a Bill into Parliament. After waiting two years, Sir John Lawrence's Government, which had been much pressed by the applications of East Indians for relief, begged the attention of Her Majesty's Government to the subject, but was told that a Royal Commission was about to be appointed at Home to investigate the whole subject of marriage and divorce in India and the colonies, and that there could be no English legislation till its report had been received. Another interval of two years occurred, and the Government of India again pressed the subject on the Queen's Government. They were told in reply that the Commission had found the subject of marriage so difficult that there was no near prospect of their entering upon that of divorce. We were therefore requested to legislate to the extent of our power, or in other words to exclude from our measure persons who had been married in England, large and increasing as the class appeared to be. In this rather unsatisfactory state of things the Select Committee recommenced its labours, but it turned out that, just at the same time, the House of Lords was giving a decision which appeared to incline the balance against *Lolley's case* and in favour of the doctrine of *Warrender* v. *Warrender*. This was *Shaw* v. *Gould*. Here the judgments of Lord Cranworth and Lord Westbury appeared to lay down the law in much the same terms as Lord Brougham—that a foreign Court could dissolve an English marriage when the parties were domiciled abroad. Section 2 of the Bill, however, does not make it a condition of jurisdiction that the petitioner should be domiciled, and it is with a view of explaining this omission that I have made this long statement. In the first place, though a man's domicile of origin is easily proved, a new domicile is proverbially difficult to establish. It depends partly on length of residence in the foreign country, partly on intention to stay there. I myself heard the present Lord Chancellor, Lord Hatherley, describe domicile as a function of time and intention, and when an eminent Judge defines it in terms half mathematical and half metaphysical, it may readily be inferred that it is not a thing easy to be proved. Moreover, as the House of Lords has recently remarked, the question of domicile hardly ever arises with regard to living persons. Now, not only will the persons who will petition under this measure be living, but they will have a clear intention of not staying permanently in India. A still further perplexity arises from

the fact that the substantive law of domicile in India has recently been altogether changed. The following are the provisions of the Indian Succession Act on the subject of new domicile :—

"A man acquires a new domicile by taking up his fixed habitation in a country which is not that of his domicile of origin.

A man is not to be considered as having taken up his fixed habitation in British India merely by reason of his residing there in Her Majesty's Civil or Military service, or in the exercise of any profession or calling.

Any person may acquire a domicile in British India by making and depositing in some office in British India (to be fixed by the Local Government) a declaration in writing under his hand of his desire to acquire such domicile, provided that he shall have been resident in British India for one year immediately preceding the time of his making such declaration."

Now this domicile under the Succession Act is a forensic domicile. It is a domicile artificially created as a foundation for rights and remedies. But it is not the domicile of Private International Law, nor is it the domicile spoken of by Lord Brougham, Lord Cranworth and Lord Westbury. The difficulty is so great that the Select Committee might have found it insuperable but for Lord Colonsay's modification of the law as laid down by the other Law Lords in *Shaw* v. *Gould*.

"It was said that a foreign Court has no jurisdiction in the matter of divorce unless the parties are domiciled in that country; but what is meant by '*domicile*?' I observe that it is designated sometimes as a *bonâ fide* domicile, sometimes as a *real* domicile, sometimes as a *complete* domicile, sometimes as a domicile *for all purposes*. But I must, with deference, hesitate to hold that on general principles of jurisprudence, or rules of international law, the jurisdiction to redress matrimonial wrongs, including the granting of a decree of divorce *à vinculo*, depends on there being a *domicile* such as seems to be implied in some of these expressions. Jurisdiction to redress wrongs in regard to domestic relations does not necessarily depend on domicile for all purposes. If the decisions to which I have referred proceeded on the ground that the resort to the foreign country was merely for the temporary purpose of giving to the Courts of that country the opportunity of dealing with the case according to their own law, and thereby obtaining a dissolution of the marriage, and that such was the object of both parties, these decisions might be said to derive support from principles of general law, on the ground of being in *fraudem legis*. But if you put the case of parties resorting to *Scotland* with no such view, and being resident there for a considerable time, though not so as to change the domicile for all purposes, and then suppose that the wife commits adultery in *Scotland*, and that the husband discovers it, and immediately raises an action of divorce in the Court in *Scotland*, where the witnesses reside, and where his own duties detain him, and that he proves his case and obtains a decree, which decree is unquestionably good in *Scotland*, and would, I believe, be recognized in most other countries, I am slow to think that it would be ignored in *England* because it had not been pronounced by the Court of Divorce here."

I apprehend that Lord Colonsay has here described with exactness the position of Europeans in India. They are resident here, but their residence falls somewhat short of domicile: their duties keep them here, and under the provisions of the Bill they can only invoke the new jurisdiction when the adultery is committed in India. I have much confidence that the English Courts will recognise Indian adjudications under this measure. There seems to me to be much weight in the dictum of a high authority, Dr. Lushington, in *Conway* v. *Beazley*. He doubted—

"whether it was the intention of the Judges to decide a principle of universal operation absolutely, and without reference to circumstances, or whether they must not, almost of necessity, be presumed to have confined themselves to the particular circumstances that were then under consideration."

The truth is that the hesitation of English Judges to recognise foreign divorces has manifestly arisen from the fact that the divorces before them had in all cases been Scotch divorces, from their feeling that Scotland was very near to England, and perhaps from a suspicion that, as Scotch marriages are easily contracted, so Scotch divorces are easily obtained. But let the Council consider whether the sort of divorce to which the English Courts are likely to object can be obtained in India under this measure. First of all, the parties must come to India, which is a very different thing from going to Scotland; then the adultery or other offence must be committed in India. In a case of an improper divorce there would almost inevitably be collusion or connivance, and, moreover, collusion or connivance under very suspicious circumstances. All the careful machinery of the Bill for the detection of these would come into play, and the judgment of divorce would never be given. So much for persons married in England. Over all the other classes indicated in section 2, we have power to give the Courts a complete jurisdiction.

Section 4 raises a question which I will not call doubtful, but upon which some of the persons who have addressed the Committee are divided. It is the question whether the District Courts shall be allowed a jurisdiction in divorce. The main reason why the Select Committee had given this jurisdiction, was that the refusal of it would amount to a denial of relief to large classes of persons affected by the Bill. It would be a mere mockery of East Indian clerks in distant cities, and of Native Christians in Mofussil villages, to tell them to come to the High Courts in the presidency towns for judgments of divorce. It is, however, said that the District Courts are not equal to these duties. The argument is one which I look upon with great distrust. If it be established that certain new legal rights and remedies should be created for the benefit of

any class of Her Majesty's subjects, and the Indian Courts are incompetent to administer them, the proper inference seems to be that the Courts should be reformed, not that the rights and remedies should be refused. But the charge is, in truth, often hastily made, and, moreover, there is nothing specially difficult in questions of divorce. They are important on account of their social importance, but they for the most part involve very simple questions of fact. The Lieutenant Governor of the Panjáb has observed that he does not think that his Deputy Commissioners are equal to the new jurisdiction. He has apparently not noticed that, under the interpretation-clause, the District Judge is, in a Non-Regulation Province, a Commissioner, and I really cannot see why the Commissioners in the Panjáb cannot dispose of these cases. Only the other day two gentlemen with military titles decided a case successively, in which the Government were interested to the extent of a million sterling, and in which very difficult questions of public law were involved; and their decree was confirmed by the Chief Court. If, however, it once be granted that the District Courts must have jurisdiction, their exercise of it is by the measure fenced round with many safeguards. The High Courts can call up at any time any case that presents special difficulty. Nor do we provide a mere appeal from their decisions, because the parties may be poor or they may have an understanding with one another and thus there might be no appeal. We have applied to the decrees of the District Courts the same principle which is applied in India to capital sentences, and have required that they be confirmed by the High Court, which has full powers of calling for fresh evidence. Sir Donald Macleod has also remarked on the provision in section 7, that the principles and rules of the English Divorce Court are to be followed by the Indian Judges, and he remarks that the Panjáb officers have no time to master these principles and rules. It is necessary that I should explain that this Bill is substantially a Code: it is not easy to conceive a point arising which it will not dispose of. There was, however, no obligation imposed on the Committee to construct a Code, and therefore it is possible that a question may arise which is not expressly provided for. To meet such a case, it is necessary to indicate the source whence the rules applicable to it are to be taken. There is, however, no more hardship in having to look for that source than in having to search for principles in other departments of law, which the Panjáb Courts must constantly be doing. I imagine, too, that any specially difficult case will always be called up by the High Court.

I have some remarks to make on section 10, which I will postpone; but I will now call attention to the second clause of the section, which provides that a wife may have a divorce on the ground that since the marriage her

husband has exchanged Christianity for some other religion, and has gone through a form of marriage with another woman. The provision has been necessitated by a judgment of the High Court at Madras. The facts of the case are very strange, and are almost as curious an illustration of the effect of our rigid legal ideas upon loose Native notions of custom, as was the discovery which we made the other day as to the state of the law on Native marriages. A Hindú was converted to Christianity, and, as a Christian, married a Christian girl. He then reverted to Hindúism, and it seems to have been found out that he could be readmitted to caste on certain conditions, the principal of which was, as I am informed, that he should submit to have his tongue pierced with a red-hot iron. He then proceeded to marry one or more Hindú wives, and was indicted under the Penal Code for the offence which corresponds with English bigamy. The High Court, however, decided that, having relapsed into Hindúism, he reacquired his rights of polygamy. The Bishop of Madras and the Missionaries of Southern India are most anxious that this decision should be set aside by legislation. I apprehend, however, my Lord, that, according to the ideas which now prevail as to the almost reverential respect which is due to what a part of the Natives of this country declare to be their custom, social or religious, it is not safe for this Council to revise legislatively the law of the High Court, or to deny the proposition that a Native of India may acquire a right to a plurality of wives through the actual cautery of the tongue. But I think I shall have the whole Council with me in saying that we can and ought to relieve the wife from the marriage-bond. It will be allowed that, from the Christian point of view, the husband has been guilty both of adultery and desertion. But the adultery is not legally adultery owing to the decision of the Madras Court, nor is there desertion, since the husband may always say that it is open to the Christian wife to live in his house with the others.

At this point, it is proper that I should advert to an omission which the Select Committee sanctioned, but which has been much complained of by several ladies and gentlemen who have addressed me in private letters. They ask that what they term "a validity clause" may be inserted in the Bill. I presume the complaint is that we do not propose to confer on the High Court the special jurisdiction which is vested in the Divorce Court by a separate Statute, 21 & 22 Vic., cap. 93. That Statute enables the Court to make declarations of the validity or invalidity of a marriage, or of the legitimacy or illegitimacy of children. There is no doubt that, so far as regards that branch of it which relates to marriage, its principal object was to establish marriages of which the validity had been doubted, and thus to quiet scrupulous consciences and to settle

rights. It can hardly be said to have been designed as a contrivance for making decrees of nullity on grounds less material than those set forth in the Bill. The Select Committee considered the matter carefully, and refused to create the jurisdiction out of deference to the authority of Chief Justice Sir Barnes Peacock and Mr. Justice Norman. The latter has given his reasons at length—

"To the question whether it is desirable to add a clause to the Indian Divorce Bill, empowering the Courts to make declarations of legitimacy, and of the validity and invalidity of marriages, I would answer in the negative.

Such decrees would not have an extra-territorial operation. They would not determine conclusively the status of the parties, or be necessarily accepted as binding on English Courts with reference to questions as to the inheritance of land.

The decrees would not be like decrees *in rem*, binding and conclusive on all persons even in this country. The rights of parties not cited would have to be saved, as is done by the 8th section of the 21 & 22 Vic., cap. 93.

We have in this country considerable experience on the subject of suits for declarations of right. And, for myself, I have no hesitation in saying that such a suit against a person who has no actual present interest in the matter to be litigated, is a very unsatisfactory mode of bringing a question before the Court for adjudication. There is sometimes no real contest. The parties against whom the declaration is sought do not feel any deep interest in a question which at the time affects them but very remotely. In such cases, at least, the Court has to act on imperfect information, even if no fraud is practised upon it.

If the defendants or parties cited do take an interest in the matter, it appears to me that they are subjected to a great hardship in being compelled to litigate, perhaps at great expense, a question in which at the time they have not, and possibly may never have, any actual pecuniary interest, and the answer to which depends on facts of which, in all probability, they have no personal knowledge."

I have always, myself, ventured to think this jurisdiction of doubtful expediency even in England. There is always danger in enabling a Court to exercise its powers when there is not before it any distinct issue or dispute between parties. When, however, it is considered that, were the jurisdiction to be conferred on the High Courts, their decrees would not operate extra-territorially, and a person remarrying on their authority might be indicted for bigamy in England—when, further, we remember that the witnesses would constantly have to be examined under commission in England, and that the persons who would have to be cited to defend their rights would constantly be living at the other end of the world—there can be little question that the Select Committee has acted prudently in denying such powers to the Indian Courts.

In saying this, however, I do not mean to say that several of the letters I have received do not tell a very unhappy story. I can only reply that to give the writers relief does not fall within the principles and purposes of this Bill.

I merely call attention, in passing, to sections 16 and 17, which describe the securities against collusion and connivance provided by the measure. In the case of decrees by the High Court, they are to be in the first instance, as in England, decrees *nisi*, and are not to be made absolute for six months. Decrees for dissolution and of nullity by the District Courts are not to receive confirmation before six months have elapsed, during which interval evidence as to collusion or connivance, if it is forthcoming, can be collected.

There was a slight difference in the Committee as to the last clause of section 19, though the dissentients have not thought the matter of sufficient importance to record their dissent. The High Courts inherit from the Supreme Courts, which in their turn inherited from the Ecclesiastical Courts, a jurisdiction to make decrees of nullity of marriage on the ground of force or fraud. It is very rarely put into exercise. But some gentlemen thought that force or fraud should be specified as distinct grounds of nullity, as is done in the New York Code. The objection is that force is quite unknown among Europeans, and equally so among Native Christians. There are many here who can speak with more knowledge than myself on the point. But I am told that what appears to us the extraordinary publicity of Native marriages is a complete security against force. As regards fraud, the Select Committee would have had a difficult undertaking in hand if it had tried to define the kind of fraud which should invalidate a marriage. Absolute personation of one man by another, which is the only fraud indicated in the Canon Law (from which the jurisdiction has apparently descended), is practically impossible in modern society. As to other kinds of fraud, take a very strong case. If a ticket-of-leave man comes to India from Australia, and, concealing his antecedents, marries an European woman, is the marriage to be set aside? A more cruel imposition can scarcely be imagined, and yet I apprehend that modern ideas would require the marriage to be maintained. The Select Committee, however, did not wish to take away from the High Courts any jurisdiction which they at present possess. If those Courts are ever called upon to exercise it, they will discover and apply for themselves the proper existing limitations.

Section 21 embodies a limited application of a principle which lawyers would gladly see engrafted on English law. It is the principle that marriages contracted in good faith, but declared to be null, shall be maintained as far as possible. The section, which is taken textually from the New York Code,

and resembles the provisions of the French Code and the numerous systems descended from Roman law, permits the children to succeed as legitimate to the property of the party competent to marry, and thus relieves them, *pro tanto*, from the stigma of illegitimacy.

On sections 56 and 57 it is merely necessary to remark that this Legislature has, strictly speaking, no power to limit the appeal to Her Majesty in Council. Practically, however, it is found that the Privy Council will respect the limitation imposed by local legislatures on appeal, when such limitations are reasonable. Section 57 permits the parties whose marriage has been dissolved to remarry if no appeal has been presented to the Privy Council. But theoretically it is conceivable that an appeal might be presented after six months. There is but little doubt, however, that the Privy Council would maintain the restrictions of the Bill under its own rules.

I now return to section 10, of which I have postponed the consideration for reasons which the Council will have divined. The section, with the exception of the clause on which I have already commented, is taken from the English statute, and prescribes the grounds of divorce exactly as they are prescribed in English law. The Chief Justice of the High Court of Bengal has, however, submitted a Minute in which he earnestly argues that the grounds of divorce should be enlarged, and that a woman should be allowed to obtain a divorce for the simple adultery of her husband, or, if that cannot be allowed, for his adultery coupled with such acts as, in the judgment of the Court, render it improbable that the wife will ever be reconciled to her husband. As the Members of Council have doubtless read the paper with all the care demanded by the eminent authority of the writer, I will not read it at length, but will give shortly the substance of the several paragraphs. Sir Barnes Peacock states his opinion to be, that he does not think it either just or politic to allow a dissolution of marriage for adultery of the wife, and not to allow it to the wife for adultery of the husband, however flagrant and however open, and however often repeated, provided it be not incestuous. He points out that this is not only his opinion, but that of many lawyers, jurists, men of the world, and legislators. He remarks on the inconsistency of placing the sexes on equal terms as regards judicial separation, but not as regards divorce. He cites a dictum, that separations without divorces *a vinculo* either condemn to celibacy or lead to illicit connection. He quotes a contention to that effect in the Marquis of Northampton's case, reported by Bishop Burnet, and a similar argument used in Lord Rous' case. He appeals to an argument of Lord Thurlow in Mrs. Addington's case that, under the Mosaic Institutions and the Gospel, a woman might be put away for adultery, and might have similar redress against her husband. He

next quotes Lord Eldon's statement that a wife had as good a right as a husband to relief in cases of this description. This statement was made in Mr. Moffatt's case, which was certainly one of extraordinary and cynical depravity in the husband. The Lords, indeed, refused the divorce by a majority of sixteen to nine, but Sir Barnes Peacock observes that it would be painful to the Judges to have to refuse a decree to the wife under similar circumstances, and that the vote of the Peers could not change the principle. The Chief Justice further observes that the House of Lords had a discretion which is not left to the Court under the Bill. He argues that, in a religious point of view, both acts of adultery are equally criminal, and both are alike breaches of the marriage-vow if looked at merely as a civil contract. "A man," he remarks, "may live with another woman in an open and notorious state of adultery revolting to his wife and revolting to society, yet his wife will not be able to obtain a dissolution on account of the adultery alone unless it be incestuous." Sir Barnes Peacock then shows that Lord Brougham, who spoke and voted against Mr. Moffatt's Bill, had apparently changed his mind in 1838. Lastly, in citing Mr. Battersby's case, Sir B. Peacock remarks that the husband had committed bigamy with his paramour and his conduct was in other respects most atrocious. "That case," he adds, "is, I presume, the origin of the words in the English Act, followed in section 10 of the present Bill, 'or of bigamy with adultery.' I do not at all understand how the bigamy strengthens the case of the wife for divorce. It was said 'how could a virtuous wife return to the embraces of such a man as Battersby.' In Battersby's case, however, it was not the bigamy which prevented such return."

It will be observed by the Council that these arguments of the Chief Justice are all of a moral nature, and if I were compelled to answer them by arguments of the same character, I freely admit I should have much difficulty in doing so. Doubtless there were members of the Committee who denied absolutely that there was any real equality between the sexes in regard to this matter. But, for myself, there is no direct answer to much that is urged by Sir Barnes Peacock, which is thoroughly satisfactory to my mind. The difficulties which I feel in regard to his proposal are difficulties arising out of considerations of expediency, of the peculiar position of European society in India, and of the relation of this Council to the English Parliament. I cannot help asking myself, in the first place, what will be the view taken by English Courts of our new system of divorce, if we introduce grounds of divorce wholly unrecognised at Home. I have already explained that I attach much importance to Dr. Lushington's declaration, that English Judges are greatly swayed by the circumstances under which foreign divorces actually take place.

Is there not some risk of our impairing the confidence of English Courts in Indian adjudications, if we write on the face of our law that our Courts are occasionally to proceed on principles not yet allowed in England? In the next place, I am not without fear that, by giving effect to these suggestions, we might multiply facilities for connivance and collusion, and there is no doubt, to my mind, that it is the suspicion of connivance and collusion, to which is attributable the jealousy entertained by English Courts of dissolution of English marriages under foreign decrees. Take the case of connivance. It cannot be denied that the securities against it, provided by the English statute, are very considerable. In order to procure a divorce, a woman must do that which will for ever exile her from society, and a man must couple his adultery with acts which will bring him under the criminal law, or with desertion which must take him away from all his ordinary duties and employments, or with cruelty which, even if we can conceive the wife assenting to it, is something from which a man of otherwise coarse fibre will surely shrink, or which he will be loath to attribute to himself. Shall we not be materially diminishing these securities, if we allow the divorce to be obtained either for simple adultery, or for adultery coupled with such conduct as a Court may deem to be a bar to reconciliation? These are difficulties which occur to my mind, but they are not the true reasons why I think it would be undesirable to carry out these earnestly urged proposals of Sir B. Peacock, much as we may be disposed to respect his opinion, and little as we may wish to establish any inequitable difference between the sexes.

I must call the attention of the Council to the dates of the authorities cited by the Chief Justice. The Marquis of Northampton's case occurred on January 11th, 1548; Lord Rous's in 1699; Mrs. Addison's in 1801; Mrs. Moffatt's in 1832, and Mrs. Battersby's in 1840. I presume, too, that, as Sir B. Peacock was in India in 1857, he had formed his strong opinion previously to that year. Can we blind ourselves to the fact that, since these authorities declared themselves, there has been a great legislative ruling on the subject by Parliament? It was in 1857 that the first Divorce Act became law. It was not as if the question raised by Sir B. Peacock was not fairly raised in Parliament. In the House of Lords, Lord Lyndhurst urged the same arguments at great length, and in the House of Commons the question was raised by a long series of amendments. In the discussion on one of them, the Lord Advocate opposed the Bill of his own Government, and argued for that equality of the sexes which is recognised in his own country, Scotland. It cannot be denied that the view of the Chief Justice was fairly put before Parliament, and decisively overruled. Whatever may be thought in general of the

expression "wisdom of Parliament," it seems to me more than a mere commonplace when an English social question is at stake, and I think it would be altogether out of place that this Council, which is a creation of Parliament, should set aside its authority in a matter which is practically the same in England as in India, and is governed by the same considerations in its effect upon English society and on Indian, which is a mere outwork of English society. There is something further to be urged. The measure for India, contemplated during the Parliamentary debates, was a measure corresponding with the English enactment. It was the English measure which was recommended to us by the Secretary of State, which was framed by Sir H. Harington, and which was introduced by me into the Council. Throughout, it has been recommended and probably supported on the authority of English precedent. If the question had been reopened on first principles, how do we know that the Bill would have made any progress at all? One, at least, of the Members of Council in charge of the Bill, Sir H. Harington, held very strict ideas on the subject of divorce, and perhaps would have argued for the absolute indissolubility of marriage if he had thought it open to him to do so. I am not sure that, but for the authority of Parliament, the measure would have reached the present stage, and I am not sure that, but for that authority, it would even now become law.

His Excellency the President said he wished to state, in confirmation of what the Hon'ble Mr. Maine had said regarding the discussions in Parliament on the Divorce Act, that His Excellency distinctly recollected all that occurred when that very important question, whether it was right to place men and women on a perfect equality in regard to divorce, was argued at great length. His Excellency did not now advance any individual opinion; he had the misfortune to differ with the majority of his countrymen on the subject, and his own opinion had been against the whole course of legislation pursued in the matter of divorce. But he was bound to say that, upon this particular question—the equality of rights between the sexes—the opinion of Parliament had been most decidedly and unmistakeably expressed; that it was debated at great length in both Houses; that the view taken by Sir Barnes Peacock was advocated by men of the highest authority, amongst whom was the present Prime Minister; but the principle of inequality was recognised and carried in the House of Commons, on a division taken on the motion of Mr. Drummond, by a considerable majority. The expression of opinion then given was so decided that though, on the question being on a subsequent night put that the clause as amended stand part of the Bill, Mr. Gladstone expressed his views at greater length, but did not ask the House to divide again. The question was

afterwards raised in the House of Lords, and though many different opinions were expressed there, the Lords came to the conclusion that it was wise and desirable to agree to the amendments made by the House of Commons, and that decision was come to after the fullest discussion, and in the most solemn manner.

Therefore, after giving full consideration to the opinions expressed by different speakers in Parliament during discussions at which His Excellency was present, he could not now say that his opinion was that there should be so wide a departure from the provisions of the English Statute as Sir B. Peacock proposed, seeing that the classes of persons affected by the Bill now before Council were to a great extent the same as those for whom Parliament was then legislating. His Excellency thought the Council here would do well to follow as nearly as possible the precedent set by the Parliament at Home, which had been approved generally by the country, and had been found to work well. The real truth was that the considerations from the moral and those from the social point of view were wholly different. From the moral point of view the equality of the sexes as regards the sin of adultery was the same both in the eyes of God and man. But the social considerations were entirely different, some of which were that the proposed change would facilitate the introduction of spurious offspring into families, and that the greater facilities we gave for divorce, the greater facilities would be afforded for collusion and connivance, and that, therefore, if the principle was adopted, it might aggravate the evils that it was hoped to cure. All this led to the belief that Parliament had taken a wise course, in the matter, and that we should be acting injudiciously were we to come to a conclusion differing in so important a respect from the law of England.

The Motion was put and agreed to.

The Hon'ble Mr. Shaw Stewart said that, in section 3, clause 2, the Bill prescribed the different Courts in which suits might be brought under the proposed Act.

The clause provided—

"District Judge means, in the Regulation Provinces, a Judge of a Principal Civil Court of original jurisdiction,

in the Non-Regulation Provinces * * * a Commissioner of a Division."

In Sind, however, which was a Non-Regulation Province, there were no Commissioners of Divisions, the officers in charge of Divisions being called "Collectors." This had not been observed at the time, and it therefore became

necessary to determine now what Court in Sind should, for the purposes of the Act, exercise the powers conferred on District Judges. It had been considered that the Judicial Commissioner was the officer best suited, in accordance with the rest of the section, to be entrusted with the powers to be exercised under the Act. MR. SHAW STEWART therefore moved—

"That, in section 3, clause 2, line 6, the words 'and Sind' be inserted after 'British Burma.'"

And that, in the same clause, after line 12, the following be inserted—

"in Sind, the Judicial Commissioner in that province."

The Motion was put and agreed to.

The Hon'ble MR. MAINE moved the following amendments—

1. "That in section 1, 'April' be substituted for 'March.'"

2. That, for section 17, clause 2, the following be substituted: "Cases for confirmation of a decree for dissolution of marriage shall be heard (where the number of the Judges of the High Court is three or upwards) by a Court composed of three such Judges, and in case of difference the opinion of the majority shall prevail, or (where the number of the Judges of the High Court is two) by a Court composed of such two Judges, and in case of difference the opinion of the senior Judge shall prevail."

3. That, in clause 4 of the same section, the words "an order confirming the" be substituted for the word "a" in line 4.

4. That the following words be added to the second clause of section 55:—"nor from the order of the High Court confirming or refusing to confirm such decree."

5. That the following clause be prefixed to section 57:—"When six months after the date of an order of a High Court confirming the decree for a dissolution of marriage made by a District Judge have expired, or"

MR. MAINE said that his amendments 4 and 5 were merely intended to secure consistency of language by calling the confirmation of the High Court an order and not a decree. His fourth amendment was meant to make it perfectly clear that there was to be nothing in the nature of a second appeal in India from the decree of the District Court. The confirmation was in point of fact not less but more than an appeal, since it did not require the action of an appellant. The second amendment was intended to secure a strong Court for these confirmations. The last part of it would probably be inoperative, since there was no Court in India composed of less than three Judges except the Chief Court of the Panjáb, and the Government of India had recently recommended to the Secretary of State the appointment of a third Judge.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended by the Select Committee together with the amendments now adopted be passed.

The Motion was put and agreed to.

ARTICLES OF WAR BILL.

HIS EXCELLENCY THE COMMANDER-IN-CHIEF moved that the Report of the Select Committee on the Bill to consolidate and amend the Articles of War for the government of Her Majesty's Native Indian Forces be taken into consideration. He said that it would be in the recollection of the Council that some time ago HIS EXCELLENCY was obliged to move that the consideration of the Report of the Select Committee on the Articles of War might be deferred in consequence of subsequent representations from certain quarters. The discussion on that Report was accordingly postponed. It would therefore be convenient to notice briefly the alterations which had commended themselves to the Committee and had been described in that first Report.

In the first place, the Committee had added to the list of enactments to be repealed Act XXV of 1857, section 1. That Act contemplated certain forfeitures on the part of sepoys convicted of mutiny, and had since been the law of the land. The Committee, however, thought that the first section of that Act might with propriety be re-enacted in Article 24, which ruled that, when a soldier was sentenced to death, his property should be forfeited. The Committee had also empowered the convicting Court to adjudge forfeiture of property in cases of offenders sentenced to transportation or imprisonment for a term of seven years or upwards. It was first thought advisable to repeal the whole of Act XXV of 1857, but on consideration it was found that there might be soldiers in the country who took part in the events of 1857 and 1858, and who, in such case, would escape with impunity if hereafter apprehended.

Objection had been taken outside to certain forms of oaths in the first draft of the Bill. The objection seemed reasonable. The Committee had accordingly struck out the special form of oath for Sikhs, but they had authorised the Commanders-in-Chief, with the sanction of their respective Governments, to frame forms of oath fitted for the different persuasions obtaining amongst the classes from whom the Native soldiers were supplied.

In the case of heavy sentences awarded by Detachment General Courts Martial held beyond the limits of British India, it had been found necessary to give (Article 142, clause *f*) the power to confirm, commute, or annul to the

Commander of the Forces with which the offender might be serving, in lieu of the Commander-in-Chief in India, or of the Presidency to which the offender belonged. The object of that provision was very obvious. It might be extremely inconvenient, in the case of bad crimes against discipline being committed by soldiers abroad, if the officer in command of the Forces (as in the case of the Forces lately under Lord Napier of Magdala) had not the power to confirm the severest punishment to which the offender was sentenced, but must be compelled to refer the case for confirmation to a Commander-in-Chief in India.

In like manner it was provided that sentences on Commissioned Officers might be carried into effect when confirmed by the Commander-in-Chief of the Presidency in which the offender was serving. Thus, it would happen that a Bengal Troop or Detachment, as was the case lately, might be serving in Madras or Bombay, and it was obvious that, for the purposes of discipline, such Troops or Detachments should be under the positive command of the respective Commanders-in-Chief of those Presidencies. The reason for the provision was precisely the same as that mentioned in the case of soldiers serving out of India and not immediately under the Commander-in-Chief in India. And the same reasoning applied to the 174th Article, which provided that a sentence of death passed beyond the limits of British India might be carried into effect when confirmed by the Officer Commanding Her Majesty's Forces with which the offender was serving.

In Part III, clause (*b*), it was ruled that military or enlisted debtors should not be liable to arrest for debt. Subsequently to the first Report of the Committee being circulated, letters came from Madras, in which it was represented by the Government of Madras, on the report of the Commander-in-Chief of that Presidency, that it would be expedient to extend the like immunity to all camp-followers and other people attached to an army, as well as to those actually serving in the army as soldiers. This was carefully considered by the Executive Government at the time, who came to the conclusion that it would be inexpedient so far to alter the law of the land as regards people not actually enlisted. As the Bill originally stood, the privilege of exemption from arrest for debt was applicable only to soldiers enlisted. Some objection even had been made to this, with regard to the status of the sepoy in India, but as the Bill was finally settled, the privilege extended to all enlisted persons in the same way as it extended to all private soldiers in the British Army under the Mutiny Act. But to extend it to any unenlisted person—that was to say to camp-followers and others connected with the army and living in cantonments—might interfere very seriously with the rights of property in various

ways. It was therefore considered inexpedient to accede to the whole of the proposition of the Madras Government. On the other hand, it was to be observed that there was a considerable tendency to extend the process of enlistment to non-combatants—people attached to the Commissariat, Ordnance and Public Works Departments, who, although they exercised military functions, were non-combatants. Some of these were enlisted, others were not. But the tendency referred to, coupled with the change made by the Committee, would in some measure perhaps eventually give effect to the wishes of the Madras Government.

His Excellency believed the above remarks exhausted the changes which were proposed in the first Report.

In the second Report of the Select Committee there were but few changes to mention.

In a number of the Articles (3, 4, 73, 77, 79, 142, 152, 156, 160, 161, 164, and in Part III, clause *h*), it had been determined to omit special mention of the Commander-in-Chief in India, and to refer to him as the Commander-in-Chief of a Presidency. His Excellency might mention that the cause of this change was two-fold. In the first place, it was observed by the Judge Advocate General of the Bengal Army that, according to the Bill as introduced, all mention of the Commander-in-Chief of Bengal was omitted, whereas it might happen, as had occurred on former occasions, that the Commander-in-Chief in India might be the Commander-in-Chief of the Presidencies of Madras or Bombay, there being a provisional Commander-in-Chief in Bengal occasioned by the death or sudden departure of the Commander-in-Chief in India. The other objection was one which came from Bombay, *viz.*, that, by the phrase used in the original draft, some new power had been attributed to the Commander-in-Chief in India. This objection appeared at first more formidable than it really was. It was apprehended, as just stated, that the Bill as drawn attributed for the first time extraordinary powers to the Commander-in-Chief in India, and did in point of fact give him the faculty of introducing himself into the minor presidencies for the purpose of immediate command.

When this objection came up, the whole question was referred for the opinion of the Advocate General of Bengal, and after careful consideration of the Acts of Parliament and Warrants under which the authority of the Commander-in-Chief in India was founded, it was established by Mr. Cowie that no power was conferred by the draft Bill which the Commander-in-Chief in India did not already possess, but, on the contrary, that those powers were

conferred by the Acts of Parliament and Warrants issued under those Acts. But it appeared to the Select Committee, both with reference to the opinion of the Judge Advocate General of the Bengal Army which His Excellency had already referred to, and also to prevent the possibility of a mistake in the sense in which the Bombay Government had discussed the matter, that it would be wise to revert to the form of the existing Articles, and erase the title of the Commander-in-Chief in India from the Articles mentioned in the Report of the Committee. But it was necessary, as pointed out by Mr. Cowie, that we should not legislate away the powers of the Commander-in-Chief in India with which he had been specially invested by Acts of Parliament, and which were kept alive by the Warrants conferred on him from year to year. Accordingly, in Part III, clause (*i*), it was stated that nothing in the Act should be deemed to affect the authority conferred on the Commander-in-Chief in India by any Act of Parliament or by Royal Warrant or Commission.

His Excellency thought it right to say, for the information of the Council and also for that of the Governments and Commanders-in-Chief of Madras and Bombay, that there was never any intention to add to the authority or attributes of the Commander-in-Chief in India by those who were responsible for the framing of this Bill. The truth was that, in the matters affected by this Bill, the power to which His Excellency had adverted, although kept alive by Warrants issued by the Crown, was dormant. It was never exercised and would never be exercised unless the constitution of the army should be altered executively, or unless it should be necessary to meet difficulties arising out of circumstances such as those of 1857 and 1858. His Excellency thought it should go forth to the public that there had never been the slightest desire or wish in any manner to add to the attributes of the Commander-in-Chief in India.

In Article 93, there was a slight change: for "offences by which such Commanding Officer is personally aggrieved," the Committee had substituted "offences against such Commanding Officer," on which it was perhaps necessary to remark. This Article was one which had caused a good deal of discussion out of doors. When the Bill was introduced some months ago, His Excellency took occasion to remark that no change of substance, as affecting the powers of Commanding Officers when properly exercised, was intended by this Article; but it had been deemed necessary, in the interests of justice, that certain restrictions should be placed on the very extraordinary powers given to Commanding Officers by the Act of 1858. At the same time, so carefully had this Article been amended, that it was impossible to say that any officer who viewed his duty as he should do could possibly say that his authority had been restricted in any

direction in which he could wish to exercise it. In support of that statement His Excellency would call attention to the words used in the Article:—

"Any offence against these Articles, except mutiny, may be tried and punished by Summary Court Martial:

Provided that, when there is no emergent reason for immediate action, and reference can, without detriment to discipline, be made to superior military authority, a Commanding Officer shall not try by Summary Court Martial, without such reference, any of the following offences:—

Offences under Articles 7 to 23, both inclusive, ordinarily punishable by General Court Martial only:

Disgraceful offences under Articles 54, 55, 56, 60, 61 and 64; and

Offences against such Commanding Officer."

It was clear that, if the offence was punishable by a General Court Martial, it should not be referred to an inferior tribunal, because the offender would escape with a punishment inadequate to the crime of which he might be guilty. The offences mentioned in Articles 54, 56, &c., were either offences against property, or such as required a nice appreciation of evidence, and which, in the great number of cases, were made over to the Civil Courts for trial. The offences under the third head were offences against the Commanding Officer himself, which the officer ought obviously, if practicable, to be prohibited from trying himself. His Excellency's attention had, in the execution of his office, been directed to the point that these offences had been so tried by the officers against whom the offences had been committed, and His Excellency was afraid that sentences had been adjudicated in some cases, while the Commanding Officers were themselves labouring under the influence of passion. His Excellency thought, therefore, that no reasonable man could possibly object to these restrictions. The change of expression adopted by the Select Committee had made the Article rather more general than in the Bill as introduced: the reason was that it would be rather difficult at times to decide whether an offence fell within the original phrase of the prohibition, and would perhaps necessitate the taking of evidence on the point; but there could now be no mistake as to the application of the Article.

His Excellency believed he had now adverted to all the changes suggested by the Select Committee.

The Motion was put and agreed to.

His Excellency then moved that the Bill as amended be passed. In making the motion, he would beg to tender his thanks to his gallant friend (Colonel Norman) who had introduced the Bill, and whose place His Excellency had now unworthily taken, owing to Colonel Norman being no longer a Member of the Council.

The Motion was put and agreed to.

CRIMINAL PROCEDURE BILL.

The Hon'ble Mr. Shaw Stewart presented the Report of the Select Committee on the Bill for regulating the Procedure of the Courts of Criminal Judicature not established by Royal Charter.

FOREST RULES (BRITISH BURMA) BILL.

The Hon'ble Mr. Maine, in moving for leave to introduce a Bill to give validity to certain Rules for the administration of Government Forests in British Burma, said that this Bill was intended to correct a slight error which had been committed in the Forest Department. Under Act XXX of 1854, the Governor General in Council had power to make rules respecting the floating of timber in the Pegu, Malabar and Tenasserim Provinces, and timber floating contrary to such rules was to be confiscated. He had also power to impose import duties on timber entering the provinces by the rivers. In 1865, strong representations made by the Forest Officers as to the devastation of Indian forests led to the enactment of Act VII of 1865, under which rules were to be made on a great variety of subjects connected with Government forests. Rules were made under this last Act by the Forest Department, which would have been perfectly valid throughout, if unluckily the framer of the rules had not incorporated with them the older rules made under the Act of 1854. This was doubtless done for the sake of convenience; but the effect was to throw doubt on the legality of part of the rules, since Act VII of 1865 only applied to timber the produce of Government forests, and did not apply to timber which had entered British India from foreign territory. Moreover, it was not a Customs' Act. Mr. Maine proposed to ask His Excellency to suspend the Rules in order that the Bill might be referred to a Select Committee, on which he proposed to place his Hon'ble friends Mr. Cowie and Mr. Bullen, and he hoped to convince them that there was no intention of placing any fresh burden on commerce, but merely to correct a not unnatural departmental error, and to protect officials who had been acting in good faith.

The Motion was put and agreed to.

The Hon'ble Mr. Maine having applied to His Excellency the President to suspend the Rules for the Conduct of Business.

THE PRESIDENT declared the Rules suspended.

The Hon'ble MR. MAINE then introduced the Bill and moved that it be referred to a Select Committee with instructions to report in a week. He observed that it was only intended to be provisional. Information had reached the Government which seemed to show that the timber trade of Maulmain was in a very unsatisfactory state. Grave malpractices were alleged to have occurred on the other side of the frontier, and there was an amount of litigation respecting the ownership of timber at Maulmain, which would be disastrous to any trade. It was the absolute duty of Government to take up the subject with as little delay as possible.

The Motion was put and agreed to.

The following Select Committee was named :—

On the Bill to give validity to certain Rules for the administration of Government Forests in British Burma—the Hon'ble Messrs. Cockerell, Cowie, Bullen and the Mover.

The Council adjourned till the 5th March 1869.

WHITLEY STOKES,
Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 26th February 1869.

Office Supdt Govt. Printing.—No. 10646 L. C.—3-3 69.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *&* 25 *Vic., cap.* 67.

The Council met at Government House on Friday, the 5th March 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C. S. I.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpúr.

The Hon'ble G. S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. N. Bullen.

EMIGRATION OF COOLIES' BILL.

The Hon'ble MR. GORDON FORBES moved that the Report of the Select Committee on the Bill to amend the law relating to the Emigration of Native labourers be taken into consideration. He said that the Bill was introduced by the Hon'ble Mr. Strachey in August last. It was a simple Bill, intended to amend Act XIII of 1864, which was the law that at present regulated the emigration of Native labourers to the British Colonies. The Bill, as introduced, contained a very few but not unimportant amendments, which, as some months had elapsed since the introduction of the Bill, he would take leave to recapitulate. The Bill first provided that vessels leaving Madras for the Mauritius and Seychelles should be provisioned between the months of November and March for six weeks, instead of five weeks, which was laid down as the probable length of voyage under the existing law. It also secured the provision of

a different space on deck for each adult emigrant than what was now provided by law. Ten superficial feet, which was the space now allotted for each adult, was proposed to be extended to twelve. A clause had also been inserted in the Bill as introduced, which gave the Government power, in the event of its being ascertained that, in any place in which emigration operations were being carried on, the plague or other infectious disease dangerous to life was prevalent, to direct that emigration should for the time being be suspended. These proposed amendments were introduced entirely in the interests of the emigrants, and were to apply only to emigration to the British Colonies. There was also a fourth clause, which empowered the Government of India to increase the rates of fees payable on emigration, if need be to double the amount of fees now leviable. It had transpired in the course of the five years during which the present law had been in force, that the cost of the establishment retained for purposes of emigration had not been covered by the fees levied under the Act. That was the scope of the Bill as introduced, which, as Mr. Forbes had said before, applied simply to emigrants to the British Colonies.

He had before him a list of thirteen Colonies, British and Foreign, the whole of which drew their labour from about the same number of provinces in India. From that statement it would appear that, up to the present time, 4,55,600 persons had emigrated from Madras and Calcutta. That did not include emigration from Bombay, which had never been considerable; nor did the numbers include emigration from Pondicherry, where the records had been very imperfectly kept prior to 1860.

Some embarrassment had been felt by the Committee in rendering the Bill as introduced, and the clauses added to it by the Committee, applicable to the French Colonies, because the convention of Paris, dated June 1860, was drawn up previously to the introduction in Indian legislation of those very complete provisions under which emigrants at present left the country. It differed, therefore, in some respects from this subsequent enactment, though there was an intention that the conditions of the convention should, as far as possible, be applied to British as well as French Colonies. As, however, Act XLVI of 1860, which embodied and recited the French convention, enacted a variety of rules to give effect to the provisions of that convention, the Select Committee had applied the amending Bill to that Act in such particulars as they could reach without a practical violation of the convention. The application of these clauses to French emigration was in some cases entirely beyond the terms of the convention: that remark applied, for instance, to the fourth section of the Bill as amended by the Select Committee, which provided that there should be an additional superficial space for every adult emigrant,

and that no child should have less than eight superficial feet. It was impossible to apply that rule to French emigration, but it might perhaps be deemed advisable by the Government of India to communicate with the French authorities on this point. It seemed unreasonable that British subjects should have less accommodation, and that their health and comfort should be less adequately provided for when sent to French Colonies, than when sent to our own. In section 1 of the Bill, as amended, it was provided that vessels should be provisioned for six weeks, instead of five as at present, when making the voyage in winter between Madras and Reunion, Mauritius or Seychelles, but it was impossible to include vessels leaving Pondicherry, which was a port of embarkation, and regarding which nothing had been said in Act XLVI of 1860, which simply recited the French convention and provided means for its fulfilment. That was another point which might be worthy of reference by the Government of India.

In the application of the third clause of the Bill as introduced, and which stood as section 5 in the amended Bill, the Select Committee had made an alteration which would have the effect of applying this particular provision to the French as well as British Colonies. It could scarcely be said that any practical violation of the conditions of the French convention would be caused, or that we should in any way be infringing the convention, by the Select Committee having taken for granted the assent of the French Government to the extension of the convention to this reasonable precaution.

In section 2 of the Bill as amended, there was a clause which was introduced by the Select Committee. It was pointed out by the agent for emigration to British Guiana and Trinidad, that the law as it stood entailed certain hardships. The agent represented that the fee paid for registering an emigrant should be refunded in case of the emigrant absconding before reaching the central depôt in the port of embarkation. The Committee had extended the section which they had introduced on that representation, and had provided that, if the emigrant absconded at any time before embarkation, the agent should be entitled to receive back the fee: that appeared a simple act of justice.

There were other clauses added to the Bill on the suggestion of the Lieutenant Governor of Bengal, and which had been approved by the Government of India. These were that, in case of emergency (section 3), emigrant vessels might leave Calcutta for any place west of the Cape of Good Hope "between the 31st of July and the 1st of April." Those words extended the discretionary time fifteen days at its close: the privilege was only intended to be made use of to prevent unnecessary detention of emigrants, occasioning great loss to

the importers of labour and additional risk to the emigrants. The reason for limiting the time originally was the very inclement weather experienced at a later period in rounding the Cape, from which Native emigrants were likely to suffer. Consequently the period of embarkation was at first limited to the 1st of March; it was subsequently extended to the 15th of March, and now fifteen days more had been added, and vessels might, in cases of emergency, leave up to the 1st of April. It was not expected that the extended time would be frequently made use of, and it was therefore introduced for the purpose of taking effect in emergent cases only.

The Select Committee had also thought it right to provide specially for children. In the correspondence before Mr. Forbes, there were letters which passed between the Emigration Commissioners and the Secretary of State for India on the subject of Indian emigration generally; and in particular with reference to the great mortality which occurred in 1864; and Mr. Murdoch, one of the Commissioners, observed that it was impossible to accommodate two half grown children in the space for one adult, which might be represented by a strip of deck two feet wide and six feet long. The Select Committee had therefore provided that children above two and less than ten years of age should have at least eight superficial feet on deck.

Another of the new provisions in the amended Bill had also received the approval of the Government of India on the recommendation of the Lieutenant Governor of Bengal. A rule had been enacted which provided that every hundred male emigrants should be accompanied by at least forty women, so that no vessel could leave port without that proportion of male and female emigrants on board. But in practice it had been found, both on the testimony of the Medical Officers and the Emigration Agents, that the strict observance of that rule had resulted in common prostitutes being recruited in default of other women being available, and that emigrants were delayed in the depôts at the risk of sickness resulting and great expense to the importers of labour; and therefore it seemed absolutely wise and humane to enact that, in cases where the required proportion of women could not be made up, the vessels should not be detained. The words "in cases of emergency" had been introduced to indicate that the rule was not to be departed from under ordinary circumstances.

Section 7 of the amended Bill provided that the phrase "The Magistrate of the District" should for the purposes of the Act mean any officer who exercised the full powers of a Magistrate. This alteration had been desired and was made in the interests of all parties, both of the agents and the emigrants. There being but one Magistrate of the District, it often happened

that long distances had to be traversed for purposes of registration, so that hardship was entailed on the emigrants as well as the agents, who had to provide for the maintenance and lodging of the emigrants during the time. The Government of India had also authorized this change.

Lastly, sections 55 to 58 of Act XIII of 1864 were proposed to be repealed. They provided that the pilot or the customs' officer, whoever might be last on board, should before leaving the vessel assemble the emigrants and ascertain if any additions had been made to their number subsequently to the vessel leaving port: this muster was required to prevent any emigrant joining a vessel on its way down the river. But it was now found unnecessary to retain this rule, because emigrant vessels were by another rule bound to take steam on their passage to the sea, so that it was perfectly impossible for such a breach of rule taking place now. MR. FORBES understood that pilots and customs' officers had made formal complaints in regard to this matter. The Government of Bengal had recommended and the Government of India had approved of dispensing with this final examination. Considering that, as the Protector of Emigrants was bound to pass every emigrant before embarkation, and to see that all the provisions of the law were complied with, it was unnecessary to take any further precaution in this direction.

The Committee had approved of another clause which was not in the Bill: it was intended to empower the Government to withhold a recruiter's license in any province from which the further withdrawal of labour might be considered inexpedient. The grounds for this provision were briefly these. MR. FORBES had mentioned that labour was drawn principally from thirteen or fourteen provinces in Madras, Bengal and the North-Western Provinces, and he had also given the number of emigrants withdrawn, which was 4,55,600; during the last twenty-five years 92,000 emigrants had returned; the remaining 3,63,600 continued abroad, and were probably settled in the colonies to which they had emigrated. They were extremely well treated; their labour was highly valued, and every inducement was offered for them to remain. Out of this last number it might fairly be estimated that 2,50,000 emigrants were adult men, which was equivalent to the entire adult male population of an ordinary Indian province, containing a miscellaneous population of about a million and a quarter, and paying a land revenue to Government of ten or twelve lákhs of rupees. MR. FORBES got that calculation by a reference to the census tables, from which it would appear that about three-fourths of the people in a province were agricultural; so that, in such a province as he had instanced, three-fourths of the population, or 800,000, would belong to the agricultural classes; and taking only one in

every four persons to be an adult male, 200,000 men would represent the real productive power of the province. He ventured to put these figures before the Council because, although the question of limiting the operation of the recruiting agents to provinces where there was any surplus labour was not entertained by the Committee, on the ground that considerations of too much difficulty were involved in the disposal of the question, he thought the figures he had quoted showed that emigration in India had assumed dimensions which might at any time render it absolutely necessary for the Government to consider the question, as the number of provinces from which emigration took place was limited in number, and the number of colonies to which the emigrants proceeded were about the same number. He wished to add, in order to enable the Council to estimate the value of the lost labour more truly, that the export trade of the colonies which had the advantage of Indian labour had increased so enormously that the produce of the labour sent out might be estimated at thousands and thousands of tons, and India's loss was represented by the benefits gained by the colonies; for, if left in the country, those labourers would certainly be capable of producing the same amount of valuable produce. It could not be disputed that India was thinly populated, and that what caused a diminution of the supply of labour diminished the supply of food, diminished the cultivation of the staples which formed the exports of India, retarded the general progress of agriculture, and increased the difficulties of capitalists engaged in the cultivation of special products such as coffee, cinchona, tea, indigo, &c.

The Hon'ble MR. STRACHEY said, except for one reason he should have thought it unnecessary to make any remarks on the present occasion, for he entirely agreed with all the details of the Bill before the Council, and he believed there was not likely to be any opposition to the passing of the measure. When the Bill first came forward, he had charge of it. He had explained that its intention was to make certain small amendments in the existing law, and although legislation was thought necessary, he might say that a more simple Bill, and one less likely to raise a discussion on matters of principle, hardly ever came before the Council. The Bill still retained its former character; but he thought it clear from the speech of the Hon'ble Mr. Forbes that he regretted that fact. He had taken the opportunity of entering into questions which involved the whole subject of emigration from British India, and of discussing the merits and demerits of the principles by which the Government and the legislature had hitherto been guided in dealing with this most important subject. Although MR. STRACHEY deemed this to be hardly a fitting opportunity for discussing such questions, he thought it would not be right to let

his Hon'ble friend's remarks go without some reply, for his Hon'ble friend's view amounted to this, that emigration was causing such serious injury to the country that it was the duty of the Government to stop it altogether. If such views were left altogether unnoticed, there might be some impression outside that they were approved by the Government. Now he would ask, in fact, what evidence there was to show that any of those injurious results which had been depicted by his Hon'ble friend had occurred. MR. STRACHEY ventured to say that there were no facts whatever to show that there had been any injurious results of any kind. His Hon'ble friend had said that, during the twenty-five years during which emigration had gone on, 4,55,000 persons had left India, and he had told us, that not long ago there were 2,00,000 emigrants still living in the Mauritius alone. According to those figures, some 16,000 or 17,000 persons, on the average, had left India every year. MR. STRACHEY must say that from those figures his Hon'ble friend had built up a somewhat extraordinary structure. We were asked to imagine a great province with a population of a million and a quarter, paying a revenue of ten or twelve lákhs a year, and his Hon'ble friend appeared to consider that the emigration of these 16,000 or 17,000 persons a year was equivalent to a loss to the country more than equal to the loss of such a province. It seemed to MR. STRACHEY that we need not be under any alarm on this subject. It seemed to him plain that this loss to which his Hon'ble friend had referred was as imaginary as the existence of the province of which he had spoken. The population of British India was ordinarily taken at some 180 millions, and from this number a population of 16,000 or 17,000 a year had to be furnished. But let it be admitted (though MR. STRACHEY was not prepared to admit it) that the assumption was correct that the emigrants were really provided from a population no larger than that which the Hon'ble Member had assumed, and that they were all drawn from those twelve or thirteen provinces of which he had spoken. MR. STRACHEY found, in a memorandum prepared by his Hon'ble friend, that he said that emigration was almost entirely limited to some half dozen provinces in Bengal and about the same number in Madras, and that the average population of each of those provinces was a million and a half. MR. STRACHEY therefore presumed that his Hon'ble friend considered that a population of about 18 millions had provided these emigrants. If 17,000 people had left India every year, it was by his Hon'ble friend's calculation equivalent to saying that one in a thousand had gone away from these Provinces annually. It seemed to MR. STRACHEY clear, that such a reduction of the population as this must be really altogether inappreciable, and this would be true even after making any allowance that we pleased in consideration of the fact stated by Mr. Forbes, that in agricultural districts the labouring

classes of the community from amongst whom emigrants were principally drawn, made up only about three-fourths of the population. There were a hundred other physical causes at work, which must have an incomparably greater effect on the numbers of the population than this very insignificant cause of emigration. His Hon'ble friend appeared to assume that if the emigrants who had left India during the last quarter of a century had remained in the country, India would be richer by the food-producing power of some quarter of a million of prosperous agriculturalists. MR. STRACHEY failed to see any basis of fact for this assumption. It appeared to him that the truth was that, if this emigration had never taken place at all, the population of India would not, as a matter of fact, have been increased by anything like that number. But supposing we admitted that it would have been increased to this extent, the real question was simply this. Would this quarter or half a million of men have been better off if they had remained in India than if they had emigrated, and if they had remained, would they practically have added to the general stock of wealth, to any considerable extent, of the community from which they were taken? It had been said that not long ago there were 2,50,000 emigrants in the Mauritius, and it was admitted that they were living in comparative wealth and comfort. The real question to be considered was, whether it was better that those 2,50,000 emigrants should be living in comparative wealth and comfort in the Mauritius, where their labour had conferred on that country and on the nation benefits of a most important character, or that they should be living in comparative poverty in India? We need not trouble ourselves to look beyond the advantages to the emigrants themselves. To whatever extent emigration was beneficial to individuals, we might safely assume that it would be beneficial to the country at large.

In the debates which took place in this Council in 1864, when the subject of emigration was under discussion, he observed some remarks, which he would read, made by Sir Charles Trevelyan:—

"The emigrant went where he earned higher wages, and could acquire that which was to him a little fortune. He saw life in new aspects, and drank in new ideas, so that he returned a changed man. The emigrants who returned from the Mauritius, to which emigration had been going on for many years, came back an improved people; well clothed, and well fed; with an aspect of contented independence, and with property which they ordinarily invested in agriculture, and it was partly to these investments that the great extension of agricultural industry in the Madras Presidency was attributable. An annual efflux of the Madras labouring population had also been going on for many years to the Coffee estates in Ceylon. They crossed the Straits of Manaar for the Coffee season, as the Irish labourers crossed St. George's Channel for the hay-making and harvest in England and Scotland, and returned home at the

end of the season with the savings of the year. He (Sir Charles Trevelyan) might mention another instance of the advantage arising from emigration. In his official tour in Tanjore he held free conferences with all classes, and especially with the landholders, the Mirásidárs, who were a very important class in that part of the country. After other topics had been discussed, they asked that the people, whom they had formerly held in a kind of serfdom, should be prohibited from emigrating. He (Sir Charles Trevelyan) told them, that every subject of Queen Victoria was free to go wherever he chose, and that the remedy was in their own hands, as they had only to give higher wages to induce their people to remain at home. If emigration had been stopped, this servile class would have remained in their old condition, but emigration had emancipated them from those who had exercised a qualified ownership over them. It had given them a new sense of freedom, and had elevated their condition, and there could be no doubt that, in various ways, the freedom which the people now possessed to go where they liked, was a great benefit to them."

It seemed to MR. STRACHEY altogether out of question at the present time even to think of putting restrictions on the right of any one to take his labour to whatever market he thought profitable to his personal interests. It was true even of the ignorant labouring classes of India that they understood their own interests in this matter infinitely better than they could ever be understood by any Government. As the Hon'ble Mr. Maine observed in the debate already referred to:—

"All emigration laws, such as the Bill before the Council, were preceded and underlain by the principle laid down by the Hon'ble Mr. Harington, the right of every subject of Her Majesty to go anywhere he pleased—to the very ends of the earth if he thought fit—for the sake of bettering his condition; that principle, he took the liberty of saying, ought to be denied least of all men by an Englishman in India."

These seemed to MR. STRACHEY to be clearly the only true principles on which we could legislate, and these were the principles on which the legislation of the Government of India had constantly proceeded. We had considered that it was not our business to interfere with the right of any man to dispose of his own labour as he thought fit; but nevertheless that it was obviously the duty of the Government to take every care that its subjects should not be made the victims of fraud or misrepresentation, and that every man who wished to emigrate should do so by his own free will alone.

He ventured to say that it would be impossible for any Government to take greater precautions than had been taken by the Government of India to afford every proper protection to emigrants, to provide efficient safeguards against misrepresentation and fraud, and to take care that no one left India without the fullest knowledge of the real nature of the step he was about to take. He would ask the Council to remember the provisions of Act XIII of 1864,

which was the most important of the laws relating to emigration. It contained, he might say, rules on almost every conceivable subject for the protection of emigrants. First, the Government of each colony to which emigration took place had to appoint an Emigration Agent, who was responsible strictly to the Government of India. Then, at each of the ports from which emigration took place, the Government of India appointed a carefully selected officer under the title of Protector of Emigrants. It was his business to protect generally and aid with his advice all emigrants who came before him, and to see that all the provisions of the law were carried out. And at every port of embarkation, medical officers of experience were appointed for the medical inspection of all emigrants. Depôts were provided for their reception, and most strict rules were laid down for their management; and the Protector and Medical Inspector were bound, at least once every week, to inspect these depôts and to examine into their state and into the manner in which the emigrants were lodged, fed and provided for. So with regard to recruiting great precautions were taken. No one could recruit without a license from the Protector, and every care was taken to guard against the danger of any person being induced under false pretences to leave the country. Before he left his own district he was to go before the Magistrate, who would examine him as to his real wishes; and if the Magistrate were in doubt, and thought that the intending emigrant had not comprehended the nature of the engagement, or had been induced to enter into it by fraud or misrepresentation, the Magistrate was bound to refuse to register the emigrant, or to allow him to emigrate. Then, again, great precautions were taken to secure the provision of proper food and lodging during the journey from his home to the port of embarkation; and when the emigrant reached the port, Mr. Strachey might say that a constant system of examination into his physical state and welfare was kept up until he finally left India. It was only after all these repeated enquiries had been made, and the officers of Government had satisfied themselves, by personal enquiries in every case, that the emigrant really desired to leave India, that he was allowed to go. Minute regulations were also laid down regarding the treatment of the emigrants during their voyage on boardship, and every security possible was taken that they should be well treated in the colonies to which they went. Special agreements were entered into with the Colonial Governments, or conventions with Foreign powers, to ensure the proper treatment of the emigrants.

Mr. Strachey thought it might fairly be said that, if the Government of India had erred in this matter, it had probably erred on the side of attempting

too much. When Act XIII of 1864 was passed, the strongest remonstrances were made against it by persons interested in emigration, and by the Government of the Mauritius, on the ground that so many difficulties were thrown in the way that emigration would become almost impossible. He believed that those apprehensions were not well founded, that so long as the Government of India insisted on the precautions prescribed by the law, it would be impossible to say that any improper encouragement to emigration had been afforded. If, notwithstanding these elaborate rules, emigration had really been encouraged, he thought the Council would agree with Sir Henry Harington who said that we had only succeeded in making emigration popular by means of the substantial protection which we had afforded to the classes for whose benefit we had been legislating.

The Hon'ble MR. COWIE said, the Hon'ble Mr. Strachey had ably defended the policy of the Government in permitting and regulating the emigration of Indian labourers to the colonies. As a non-official Member, MR. COWIE might be allowed to record his entire dissent from the remarks made by the Hon'ble Mr. Forbes against the further permission of emigration. MR. COWIE was of opinion that every Native should be free to go wherever he chose, subject of course to the enforcement of proper sanitary regulations. He should be sorry to see the Hon'ble Member's views maintained so as to prevent a labourer from emigrating to any place where he might think it to his interest to proceed.

The Motion was put and agreed to.

The Hon'ble MR. GORDON FORBES moved that the following section be introduced after section 1:—

2. For section 24 of the said Act No. XIII of 1864 the following shall be substituted:—

"24. The protector of emigrants at each of the three ports aforesaid and the British Consular Agent at each of the French ports in India, shall license so many fit persons as shall to him seem necessary to be recruiters of labourers, and no person shall act or be employed as a recruiter of labourers except under a license from such protector of emigrants or British Consular Agent."

He said that the proposed change had been required by the Secretary of State in a despatch dated some time back. It was intended to legalize the appointment and licensing of recruiters by the British Consular Agents at French Ports of embarkation; this omission in the Act of 1864 seemed to be unintentional. The Secretary of State's despatch had the following paragraph:—

"There may perhaps have been no practical objection to permitting the Consular Agents at the French Ports in India to license persons to act as recruiters of emigrants in British

territory; but as this power was declared by the Advocates General of Madras and Calcutta to be legally vested solely in the Protectors of Emigrants at the three presidencies, it would have been more prudent not to have authorized a deviation from the law. It is desirable, however, that no time should be lost in legalizing the practice you have permitted the Madras Government to recognize."

That was the reason for the introduction of this amendment, which necessitated the re-numbering of the sections, and the addition of the following section:—

"11. All persons are hereby indemnified for anything done before the passing of this Act which might lawfully have been done if this Act had been in force; and no suit or other proceeding shall be maintained against any such person in respect of anything so done.

This section shall come into operation at once: section two shall be deemed to have come into operation on the eighteenth day of March 1864; and the rest of this Act shall come into operation on the first day of May 1869."

This final clause was simply necessary to indemnify persons for acts done under authority of the Government, but without legal sanction up to the present time. This clause would take effect at once; section 2 would date from the 18th of March 1864, and the rest of the Act would not take effect till the first of May, because the owners of French ships should have timely information of the changes made in the law.

The motions were severally put and agreed to.

The Hon'ble Mr. Gordon Forbes also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL COURTS' (BOMBAY) BILL.

The Hon'ble Mr. Shaw Stewart asked leave to postpone the presentation of the Report of the Select Committee on the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay.

Leave was granted.

GENERAL STAMP BILL.

The Hon'ble Mr. Cockerell presented the Report of the Select Committee on the Bill for imposing Stamp Duties on certain instruments. He said there were some rather important alterations in the Bill, especially in regard

to the rates of duty chargeable on transactions of the larger amounts. He therefore proposed to republish the Bill before proceeding with the consideration of the report.

FOREST RULES (BRITISH BURMA) BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to give validity to certain rules for the administration of Government Forests in British Burma.

The Council adjourned till the 6th March 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. General for making Laws and Regulations.

CALCUTTA,
The 5th March 1869.

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Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Saturday, the 6th March 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*
His Honour the Lieutenant Governor of Bengal.
His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.
The Hon'ble G. Noble Taylor.
Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I. of Balrámpúr.
The Hon'ble G. S. Forbes.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

INCOME TAX BILL.

The Hon'ble SIR RICHARD TEMPLE in moving for leave to introduce a Bill for imposing duties on Income and profits arising from Offices, Property, Professions and Trades, said

"I have now to submit to Your Excellency and to the Legislative Council the financial Budget of British India for the official year 1869-70. This will be the tenth annual statement presented since the creation, in 1859, of the office which I have the honor to hold.

Following the practice of my predecessors, I shall divide my exposition into three parts, namely, the "actuals" of 1867-68; the "regular estimate" of 1868-69; the "budget estimate" for 1869-70. Slightly veiled under these tech-

nical designations, my meaning is just this—I shall exhibit the finances, firstly, as they have really turned out for the year that is past; secondly, as they are almost certainly turning out for the year that is present; thirdly, as they are expected to turn out for the year that is to come.

The first part of my subject, then, relates to the finances of the past year 1867-68. My Right Hon'ble predecessor Mr. Massey showed in his last statement that the receipts had risen from 46¾ millions sterling in the budget estimate to 48¼ millions in the regular estimate. In the statement of actuals which I have now to produce, these 48¼ millions have risen further to a little less than 48½ millions. In other words, the income of that year has turned out actually 1⅔ million more than what was originally estimated. This is so far very satisfactory.

On the other hand, the general and ordinary expenditure of that year has actually turned out to be nearly 49½ millions, being 2 millions more than the budget estimate of 47⅓ millions. Of this increase half a million arose in India, and the remainder occurred in England.

Thus it is that although the receipts of that year rose much more than was anticipated, the expenditure rose even more. And the result shows 49½ millions of expenditure to only 48½ millions of receipts, or an actual deficit of more than a million.

But the statement of general and ordinary expenditure, as I have just given it, will be found to differ from that presented by my predecessor. It will be remembered by this Council that last year he explained the distinction which had been introduced between ordinary and extraordinary expenditure. In the extraordinary expenditure he proposed to include not only the great irrigation works and the special works at Bombay, but also a part of the expense of military barracks, of roads, and other public works. After further consideration it has been decided, with the express approval of the Secretary of State, that only such works as those for irrigation or for the special land funds at Bombay shall be counted as extraordinary; and that all other public works, including military barracks, communications, and the like, shall be treated as ordinary. The principle of the distinction is clear. All public works, however beneficial indirectly, are to be provided for from the ordinary income of the year: and those works only are to be treated as extraordinary and provided for by loan which will yield a direct cash return to the treasury. In order to meet this view, the original budget estimate and the statement of actuals have been slightly rearranged. And the consequence is the exhibition of a deficit as already set forth.

Besides the ordinary expenditure thus revised, there was also an expenditure of more than half a million on extraordinary works according to the improved definition. This added to the 49½ millions already shown brings up the total to more than 50 millions.

Thus the financial out-turn of the last year, 1867-68, has been a deficit of a million, including all ordinary expenditure, or a deficit of more than a million and a half, including extraordinary expenditure.

This result, running counter to some arguments heretofore used, does no doubt read us a lesson; especially as it follows on the heavy deficit of 2½ millions left by the preceding year, 1866-67.

So much, then, for the finance of the last year, 1867-68, as now proved by the event. And before quitting the region of actual event, I would observe that in respect to the revenues and resources of India, experience shows that the estimates, in the aggregate however favorable, are almost always outstripped by the reality. Just as wave passes wave in a rising tide, so one budget after another springs up in an ascending scale. Then although each budget estimate has surpassed its predecessor, it in its turn has been usually surpassed by the regular estimate as the year advances, which, again, has been generally surpassed by the statement of actuals after the year has closed. Such experience does indeed inspire hope.

But then unfortunately the same process happens with the expenditure, and the consequence has been that of the eight years that elapsed from the commencement of our budget system in 1860 up to the end of last year, three only were years of surplus, while five were years of deficit. In one year, however (1861-62), the deficit was but small, so it may be said that half the period, or four years, have been remarkable for surplus or equilibrium; while deficit has been characteristic of the remaining half.

All these deficits occurred notwithstanding that within this brief period, that is, since 1859-60, our income grew from 39 millions to 48½, showing increase of 10 millions, or more than 20 per cent.—which increase has accrued not by territorial accession involving counter expenses, but by regular development—and notwithstanding that there has been no considerable war, and that general peace has prevailed. Nor can these deficits be attributed to expansion of military and defensive establishments, for, on the contrary, the military and marine charges (incurred either in England for India, or in India itself) have fallen by full 50 per cent. The real growth of expenditure, then, has been on account of general administration or of public improvement.

This fact is, on the one hand, satisfactory, as showing that the expenditure has been directly for the advancement of the people of India, the money having been spent on the country itself. On the other hand, it affords a warning that such increase being not absolutely unavoidable (however beneficial) must either be sternly kept down, or else, if it be maintained in the just interest of the country, then that some augmentation of our resources must be secured.

Again, although the retrospect of increase upon any given period, like a decade of years, is gratifying, yet the gratification would be abated if the increase were to be strictly analysed. For, on the whole, the land revenue within the period has not materially increased; doubtless the settlements, permanent or for long periods, prevent such increase, but then re-settlements in several parts of India have been made on expiry of old settlements, and yet for the country at large the net result has been to keep the total much as it was. The customs have not increased; there is nothing wonderful in that, inasmuch as the duties have been so largely reduced. No doubt the salt revenue has much risen; but then the duties have been greatly raised in some provinces. So also the opium revenue has risen; but the causes of that progress are extraneous to India. On the whole, nearly half of the 10 millions of increase has sprung from the two items of salt and opium. The rest has arisen from several sources, among which must be included assessed taxes. Thus our progress, though, on the whole, considerable, is yet not such as would indicate any *rapid* development of those national resources on which the State can rely. This progress, therefore, is not at all such as should inflate us with undue confidence or lull to sleep our financial vigilance to maintain the equipoise of income and expenditure.

Sir Charles Trevelyan, speaking in 1863, expressed a fervent hope—not yet realized—that the deficit of 1861-62 would prove to be "the last of the long series of Indian deficits."

My predecessor, Mr. Laing, addressing this Council in 1861, spoke with a just horror of a chronic deficit in time of peace. Mr. Laing graphically described such a deficit as a "huge bully, with whom weary rounds must be "fought, who must never be allowed to claim a cross or a drawn battle, but "who must be gone into and finished." Again, he likened such a deficit to "an "Indian tiger into whose carcase a parting shot must be fired." Lastly, he said that if deficit could *then* be only "extinguished," the Chancellor of the Exchequer might "renounce his taxing art, and like Prospero bury his magic "wand fathoms deep." And surely enough he *did* succeed in drowning deficit

for a time. For that year there was a deficit so slight as to be inappreciable. For the two following years there was a surplus. For the next year, too, there was but a small deficit. But now for two years past the deficits have reappeared. And for the current year I shall have to tell the old tale of deficit. Thus, alas! deficit, though scotched, was not killed after all. But the "bully" of Mr. Laing's time is in these days up in arms again; the "tiger" has come back to life; the smouldering flame not finally "extinguished" has burst out again in our finances.

I now come to the second part of my subject, the current year nearly expired, 1868-69.

The budget estimate for this year presented by Mr. Massey showed the receipts at 48½ millions. But as the year has advanced, and as the known figures of eight months out of the twelve have enabled us to correct the budget estimate, we have been obliged to bring up the anticipated amount to 49¼ millions, showing a satisfactory augmentation of ¾ of a million. The increase distributes itself in a normal and natural manner over the many branches of our income.

The only items which I shall select for notice are customs and opium.

In round numbers the budget showed 2½ millions for customs; the regular estimate shows 2¾ millions, or an increase of ¼ of a million, which is very satisfactory so far as it may indicate the progress of trade. The budget estimate for 1868-69 was taken at 2½ millions, being in excess of the preceding budget (2⅓ millions), notwithstanding that during the year there had been numerous remissions of petty duties, some 40 articles having been removed from the list of dutiable imports, and 88 articles from the list of dutiable exports. Still the budget estimate rose, just confidence being felt in the elasticity of the trade. But this rising budget has, as we have just seen, been outdone by the probable results, the estimate of 2½ being brought up to 2¾ millions. The increase is almost equally distributed among our principal ports, Calcutta, Bombay, Madras, and Rangoon; and also between the two headings of imports and exports. There is increase in the fiscal yield of such imports as silks, as metals, as stores and materials. The importation of English piece goods has been well sustained; but unfortunately the drought and distress in northern India affecting many classes of Natives who are customers for our English fabrics, has caused many markets in the interior of the country to be slack and dull.

While on the subject of customs, I shall note that we have recently issued for the first time a volume of the statistics of the foreign trade and naviga-

tion for British India, prepared after the model afforded by the Board of Trade in London. Whatever may be said as to the deficiency of current statistics in India, such remarks will no longer apply to the returns of our foreign trade. Now, what does this volume show? Why, that the total foreign trade (merchandize and treasure) amounted to 101 millions in value in 1867-68, against 95 millions in the preceding year, showing an increase of 6 millions, or 6 per cent. Just nine years ago in 1860, Mr. Wilson, when describing the financial dangers of that era, mentioned as a pillar of strength the fact that in three decades of years (that is, 30 years) the trade had sprung from 14 millions sterling in value to 60 millions. Since then another decade has passed away, the 60 millions total has risen to more than 100 millions, and the trade is still rising fast. Again, in Mr. Wilson's time, the customs revenue was just under 2¾ millions. It is a little over that now: and this notwithstanding that the duties have been reduced from 20 and 10 per cent. to 7½ and 5 per cent., and that full 130 articles have been wiped out from the list of dutiable merchandize at the Customs House! Although only one-half or one-third of the old rate of duties is now taken, nevertheless the revenue has more than recovered itself within nine years.

Further, these latest trade returns disclose some striking facts indicative of that sort of prosperity which is the real basis of national finance. For instance, India is now taking annually full 20 millions sterling worth of English fabrics, cotton, silk, and woollen. On the other hand, she is sending away annually to England and the colonies some 8 millions sterling worth of her agricultural produce, grains, seeds, and fibres, skins and wool. This, too, is exclusive of opium and cotton. The manner in which the exportation of cotton—on which the wealth of Central and Western India so largely depends—has been sustained, even since the close of the American war, is remarkable. Before the war, that is, before 1861, India used to send to England not more than one-fourth of the quantity which America sent. During the war, while the American production fell off, India exported as much as a million and a half of bales a year, and is still sending but little less than that quantity. The American cotton has now of course regained somewhat of its former position. But still the quantity seems hardly to exceed the 1½ or 1¼ million of bales which India now contributes. The great position which India is acquiring in the cotton marts of England is owing not only to the stimulus afforded by the American war, but to the efforts persistently made by the British Government through its own Special Commissioners to improve the culture of the indigenous staple, to ensure the produce being properly cleaned and packed, and transported without damage to the seaboard: all which is aided by the pressing with European machinery fast

springing into use in the interior of the country. Again, the progress is remarkable with the articles produced in India chiefly through the exertions of our own countrymen. For India is now sending away annually 8 millions of pounds of tea and 37 millions of pounds of coffee; while the value of her indigo export is nearly 2 millions sterling per annum, and of her silk 1½ millions. That these results should be achieved through the direct agency of a handful of non-official English gentlemen, is one among the many wonders of the time.

Next, for opium, in round numbers the budget estimate showed under 8½ millions: the regular estimate shows upwards of 8¾ millions, being an increase of half a million. This arises not at all on the Malwa or Bombay opium, but almost entirely on Bengal opium. So far as can be seen, the Malwa opium is yielding much about the amount that was anticipated. The duty being a fixed duty of Rs. 600 a chest, the fiscal yield depends entirely on the number of chests sent for exportation; and that number has as yet corresponded closely with the estimate. But the prices obtained at the Calcutta opium sales have gone considerably beyond the budget estimate. In that estimate Mr. Massey assumed a price of Rs. 1,250 (£125) per chest. For the previous year he had assumed only Rs. 1,150. Finding that this latter estimate had been exceeded by the reality, he decided to go higher for this year, and so he took Rs. 1,250, an apparently high rate, according to experience of several recent years, expressing, however, a good hope that this enhanced estimate would prove moderate and would be outdone by the reality. And surely enough it has been so outdone. For up to date the auction prices have averaged Rs. 1,380 a chest, and sometimes have even over-topped the high price of Rs. 1,400. Further, this fiscal increase has accrued notwithstanding that the Bengal authorities have only been able to bring 47,235 chests into the market instead of 48,000, or 765 chests short of what was to have been expected. This deficiency of supply was caused by the shortness of the crop of last year in the Behar Province, which for want of seasonable showers was less than it should have been on the area under culture.

The receipt side for 1868-69 being thus satisfactory, how stands the expenditure side? Now, here the first noticeable feature is this, that the ordinary expenditure of all kinds, according to the improved definition, has risen from 46½ millions in the budget estimate to 50¼ millions in the regular estimate, showing an increase of 3¾ millions. But this increase is not really so formidable as it looks; for by the improved classification 1¾ million for military buildings and for communications and embankments, which were

excluded from the ordinary expenditure in the budget estimate, have now been included, causing, of course, a corresponding diminution of the extraordinary expenditure. And this leaves 2 millions of increase to be accounted for.

Now, the Council will be glad to hear that this increase has not arisen upon the ordinary civil and military charges incurred in India. On the contrary, these heads of charge show rather a saving than otherwise. For instance, the regular estimate shows a reduction on the budget of £60,000 under the charge for collecting land revenue; of £50,000 for collecting the salt revenue; of £75,000 under law and justice; of £70,000 under police; of £100,000 for the army, and this saving has been effected after defraying the extra charges (some £50,000) for the recent expedition in Hazara. All these savings speak volumes for the rigour with which economy has been enforced during the year by the various executive authorities, and for the precision now attained in our system of audit and account. On the whole, the budget expenditure for civil and military charges in India stood at 35¼ millions, and the real expenditure comes out at that very sum with but a slight difference. And even that difference is explained by our having paid £200,000 (not originally estimated for) of Berar surplus to the Nizam in the just discharge of our obligations on that score. Much has often been said of the uncertainty of Indian accounts. These figures go to show that as regards the civil and military expenditure *in India*—which is of course well under our control—there is no such uncertainty, and that what is budgetted for under these heads will not materially be exceeded.

Where, then, has the increase over the budget estimate occurred? Why, it is attributable to public works ordinary, to expenses connected with railways, and to unavoidable expenditure in England, as I must proceed to show.

The budget grant for public works ordinary amounted, according to the improved classification, to 5⅔ millions. The regular estimate shows that expenditure will be incurred up to 6 millions; showing an increase of ⅓rd of a million. The increase has arisen from various causes, among which may be mentioned the outlay on central jails, and the execution of works for the relief of the population suffering from scarcity in the drought whereby some parts of India are visited.

I have just above stated that 1¾ million classed in the budget under extraordinary expenditure had by the new classification in the revised estimate been transferred in the ordinary expenditure. Of this amount, 1⅓ million is

for the great military barracks. As explained by my predecessor last year, the scheme for new barracks for European troops throughout India was to cost from 10 to 11 millions, and the work was to be done in a period of five years. It is hoped that the estimated cost may not be materially exceeded, but to secure this result the most unremitting vigilance will be needed. Be this as it may, however, the period of construction will certainly be prolonged, for the five years have now elapsed, but the work is not half done; and out of the 10 millions only 5 have been spent, leaving at least 5 yet to be laid out. But the designs had to be elaborated by the best military engineers in India, and then sent to the first sanitary authorities in England for approval. Then new sites had to be selected after long enquiry as to salubrity and the like. Thus, despite every care and anxiety to push on the work, the progress for the first few years was not rapid. More recently, however, the plans having become finally settled, and the establishments fully organized, great progress has been made, and during the current year no less than 1½ million is being expended on these buildings. The result is that noble structures, providing for the married and unmarried soldier quarters equal to the best to be seen in any country, are rising up at Allahabad, at Lucknow, at Hyderabad, at Poona, at Bangalore, at Indore, and at many other stations. Nothing that science can suggest to make these quarters healthy and comfortable for the troops has been omitted. At the present rate of progress and of expenditure, it is hoped that the work will be finished some six years hence, which with the years already occupied will make a period of eleven years.

Out of the 5 millions as yet spent on the barracks, whether the greater part has been really borrowed or not, I shall presently explain. But the remainder, amounting to some 5 millions, is certainly to be provided for from the revenues without any borrowing on this account. This is a matter lying at the very root and foundation of the Government itself, to which our fiscal resources ought primarily to be devoted. The provision thus required is therefore one of the most pressing needs of the day. And as days are like years in the life of a nation, the meaning is, that the need of the day shall in this respect be met financially in the day, and shall not be put off till the morrow and the day after the morrow. At one time indeed there was hope that inasmuch as this was special expenditure, the advantage of which would be felt for ages to come, the whole cost should not fall on us now living, but should by the process of borrowing be partly transferred to those who shall come after us. But reflection shows that those who come after us will have plenty to pay for without paying for any part of these barracks! Will any one say that when these barracks are finished there will be nothing

more of importance to be done in this direction? Is there not sanitation to be carried out at our cantonments and stations to an extent which at present can be but dimly fore-shadowed? Are there not our coast defences and fortifications to be provided for? Is there not our marine to be strengthened, a subject which has been alluded to more than once in this Council? Again, by reason of so large a proportion of our means being appropriated to military buildings, the expenditure on some other kinds of public works, especially roads, has unavoidably lagged and halted. Recently we have not spent quite so much as we once were spending on our internal communications. When, therefore, the financial pressure for military buildings shall be somewhat lightened, renewed vigour will be required for the roads, particularly those which are called railway-feeders, as leading from the interior of the country to the various stations,——which are to supplement our railway system, and to be, as it were, the veins to the main arteries.

Speaking in 1867 regarding this very barrack expenditure, Mr. Massey made a remark which is so apposite and judicious that I shall quote it here. He said: "I should have preferred going on as hitherto defraying this charge, "special and temporary as it is, out of the revenues of India. If a financier "were to lay down any precise rule of separation between ordinary and extra-"ordinary charge, there is scarcely a year in which he might not have a "plausible pretence for transferring charge from revenue to capital account. "I do not know how long such a process might go on. But sure I am that "sooner or later it would end in a collapse of public credit."

Such was the dictum of Mr. Massey, to which I heartily subscribe. The principle on which canals and State railways are provided for by loan is intelligible. But if barracks are to be thus treated without any clear principle and removed from ordinary expenditure, then I know not what item might not be next removed, till at last we embarked on a course of borrowing that would be fit only for bankrupt exchequers.

There is one instance of decrease under the head of public works, which is this: the item of "loss by exchange on railway transactions" has fallen from £122,700 in the budget to only £29,700 in the regular estimate. At present the practice is this: in India our exchequer advances all that is required for the construction of the railways, and receives all the traffic receipts, in virtue of arrangements originated so far back as 1849. Both our payments and our receipts are accounted for to the principal railway companies at a fixed contract rate of 1*s*. 10*d*. for the rupee, a rate as yet below the actual exchange and below the exchange of two shillings for the rupee, which for convenience

sake is adopted in all the accounts between the Secretary of State and the Government of India. Thus there is a loss on all our payments and a gain on all our receipts,in the present state of the exchanges. As yet our payments exceed our receipts and the loss therefore exceeds the gain; the net result being as shown in the statement. Hereafter, when, as we may hope, the net traffic receipts shall exceed the advances for construction, the loss will disappear, and in its place there will be gain on exchange. Meanwhile the loss in this year has been less than the estimate, partly by reason of increased traffic receipts, and partly because the advances for construction have been less than what was expected.

The several items of public works ordinary which I have thus described make up the total to 6 millions, which total amounts to about 12 per cent. upon the revenues.

The next noticeable item is that of "guaranteed interest on railway capital, less net traffic receipts," which has risen from $1\frac{1}{4}$ million in the budget to nearly $1\frac{3}{4}$ million in the regular estimate; or showing an increase of nearly half a million. This has arisen from the estimate in India for gross traffic receipts being less than what was originally expected.

This technical description is really pregnant with significance as representing transactions of mighty import. For what does it signify? Why, it signifies that on 77 millions of capital raised for the construction of railways in India, there accrued during the year $3\frac{3}{4}$ millions of interest due to the shareholders under guarantee from the Indian Exchequer; that the gross traffic earnings of the year on 4,000 miles of railway opened in India amounted to $5\frac{3}{4}$ millions paid into our treasuries, reduced by the exchange to $5\frac{1}{4}$ millions; that the working expenses, amounting to 3 millions, left $2\frac{1}{4}$ millions of net traffic receipts; that the $2\frac{1}{4}$ millions net traffic receipts deducted from the $3\frac{3}{4}$ millions of guaranteed interest left a sum of $1\frac{1}{2}$ million shown above as ultimately debitable to the finances of the year. Originally there used to be doubts as to whether the natives of India would adequately appreciate railways. The truth is that during this present year the public in this country is voluntarily paying 6 millions sterling to obtain the advantage of railway conveyance for passengers and goods—that in the year some 3 millions of tons of goods are conveyed by rail, and that the return of passenger journeys amounts to 16 millions. As regards the national growth of British India, it is difficult to conceive figures more eloquent than these!

In the first budget statement ever submitted to this Council in 1860, Mr. Wilson gave the gross traffic receipts for that year at a little over $\frac{1}{2}$ a

million, and the working expenses at a $\frac{1}{4}$ of a million, leaving a net receipt of something over a $\frac{1}{4}$ of a million. This he declared to be "a most gratifying fact, one which augurs well for the future." Would that he were now alive to hear that in this the tenth budget statement submitted to this Council, the $\frac{1}{2}$ million of gross receipts had grown to near 6 millions, and the $\frac{1}{4}$ of a million of net receipts to between 2 and 3 millions,—that within ten years the increase had been tenfold or nearly elevenfold!

The last item to be noticed is that of net expenditure in England, including stores, which has risen from $6\frac{1}{3}$ millions in the budget to $7\frac{1}{4}$ millions in the regular estimate, showing an increase of more than $\frac{3}{4}$ million. This account being received from the Secretary of State must be implicitly accepted. The augmentation has arisen under various heads, such as the Indo-European telegraph; the marine stores; the passage of officers and troops overland. There is one important item actually incurred and not provided for in the budget, namely, £92,000 for the construction of two monitors or floating batteries for the defence of the Bombay harbour. Considering the needs of that harbour, we feel particular pleasure in admitting this item into our accounts of the year.

Thus I account for an ordinary expenditure of $50\frac{1}{4}$ millions, which, as compared with the ordinary income already shown, $49\frac{1}{4}$ millions, leaves a deficit of just 1 million.

Under the head of extraordinary public works the first item is the outlay on irrigation works, for which £800,000 were provided in the budget, but on which £852,000 are being expended in India. One main cause of the increase is the amount advanced by the Government to enable the Irrigation Company of Orissa to prosecute its life-giving works during a period of awful distress in that province, and by the immediate outlay consequent on the prosecution of these operations being undertaken by the State.

The next item is that of nearly $\frac{1}{2}$ a million for special works at Bombay, which item really represents advances from the treasury for certain reclamations and other operations on lands at Bombay,—advances which we hope to recover hereafter when the value of the said property shall be realized.

Under the same head we have, subject to the approval of the Secretary of State, opened out a new heading, which was not provided for in the budget, and that is "State Railways." These are reproductive works calculated to yield an actual income to the State sufficient ultimately for the provision of

some interest on the capital outlay. In his statement before this Council last year, Mr. Massey alluded to the commencement, by direct governmental agency, of the construction of the railway from Lahore to Peshawur. Though important preliminary arrangements have been made during the year for this line, yet the expenditure is trifling, only £12,000. The sum which now appears in the regular estimate, ½ a million, is nearly all for the Calcutta and South-Eastern Railway, which, as the Council knows, runs from this city to the new Port Canning on the Mutla river. This line has been taken over by the Government at a charge amounting in the aggregate as above. Of this, nearly £200,000 have been incurred in India, and the rest in England. At first the line was unremunerative, but under its present good management it begins to pay its working expenses.

The total extraordinary expenditure, including the sums above mentioned for irrigation, for special works at Bombay, and for State railways, will amount to 1¾ million. This exceeds the corresponding expenditure of the preceding year, 1867-68, which was under ¾ of a million.

On the whole, the grant for the public works ordinary and extraordinary of the year amounted to close upon 7 millions, and is about as large a grant as has ever been made. But it is being exceeded by the expenditure, which will amount to 7¾ millions, the excess being ¾ of a million, and the expenditure being decidedly the largest ever yet attained in one year. It is important to notice this, because in former budgets consideration has been justly had to the probability of the grants or allotments for public works not being fully used.

The result of the regular estimate, then, is an ordinary expenditure of 50¼ millions, which with an extraordinary expenditure of 1¾ millions swells to 52 millions. The 50¼ millions of ordinary expenditure, compared with the revenue of 49¼ millions already exhibited, shows a deficit of 1 million. The 52 millions, including extraordinary expenditure, shows a deficit of 2¾ millions. The Council will remember that the budget estimate showed a total expenditure, ordinary and extraordinary, of 49½ millions, against a revenue of 48½ millions, with a deficit of 1 million. But as the year advances, it is seen that this deficit is becoming more than doubled in the regular estimate, and the expenditure of the year is exceeding the budget by 2½ millions. I may state in recapitulation of what has been already explained that this excess has hardly at all arisen on civil and military expenditure in India, but has really arisen on the purchase of a railway by the State, on the guaranteed railway interest, on public works ordinary, and on the expenditure in England.

The Council will remember that in his statement of last year, Mr. Massey mentioned that we should begin this twelve-month with £800,000 in hand, unexpended balance of loans, and expressed a hope that no borrowing would be resorted to during the year. It will now have been seen that the above balance has been more than used up for irrigation alone. Besides that there have been the other extraordinary works above described. And it has accordingly been found necessary to borrow to a limited extent in England, that is, about ¾ of a million.

Raised in England ...	£1,236,000
Less debt discharged ...	£ 502,600
	£ 733,400

We began the year with a cash balance as now actually ascertained of 12 millions, which was at that season enough, and no more. Besides the increase of the deficit, these balances were reduced to the lowest ebb compatible with safety, by an important cause which I will now mention.

During the past and the present years (1867-68 and 1868-69) the Indian Exchequer has had to advance most of the sums required for the expedition to Abyssinia. These advances from first to last have amounted to about 7 millions, being fully 2 millions more than the anticipation. This aggregate represents only the sums chargeable to the English Government, exclusive of the ordinary pay of the troops that proceeded from India, which is chargeable to India. With such events in progress, all foresight as to the total amount was of course baffled. These sums are recoverable from Her Majesty's Exchequer, and they are being duly recovered from time to time; the greater part indeed has now been repaid. But as the advances had to be made on the instant, and as the recoveries must necessarily occupy some little time, the pressure meanwhile became severe on our treasury. As temporary emergencies arose, the Bank of Bengal and the new Bank of Bombay rendered aid, partly with their own available balances and partly with the balances which the State has to keep with them under the agreements. Besides this, the Bank of Bengal afforded temporary and special loans which from first to last aggregated 1¼ millions. These loans have been already paid off in part, and the rest is in course of repayment.

Further, the accounts of the expenditure incurred in India for Abyssinia are being made up at Bombay. Although the forces only in July last returned from the expedition, yet by this date some 6 millions, or nearly the whole of the expenditure, have been adjusted and passed. Those who remember how the accounts of former campaigns in Affghanistan, in the Punjab, in China, used to drag their length over years and years, will appreciate the changes which have been introduced into the account department.

Thus ends the year 1868-69, with a deficit on ordinary income and expenditure, being the third consecutive year on which deficit is leaving its mark.

The deficits of the three years amount to just 4½ millions, total deficiency *on income and ordinary expenditure, viz.*, the deficit in 1866-67 of 2½ millions, that in 1867-68 of 1 million, that in 1868-69 of 1 million. These are, of course, exclusive of the extraordinary expenditure since 1867-68 on reproductive works, which I do not reckon here at all.

But how has this aggregate deficit of 4½ millions been met? Why, by loans. During these three years, 6½ millions have been borrowed either in India or in England and added to our national debt. Of this sum there were 2 millions expressly borrowed for extraordinary and reproductive works, and certainly this money has been fully and fairly devoted to its proper purposes, for during the three years the total outlay on irrigation and on the Bombay special works have exceeded 2 millions; indeed it has come up to 2½ millions. Besides which one railway has been purchased for ½ a million. So that in truth we have spent 3 millions for these reproductive works. Again for the barracks 3½ millions have been expended within the three years. Thus the loan money is fully accounted for.

	India.	England.	Total.
	£	£	£
1866-67	600,000	2,641,900	3,241,900
1867-68	1,329,800	1,163,907	2,493,707
1868-69	...	724,000	724,000
Total ...			£6,459,607

On the other hand, as the barracks are now included in the ordinary expenditure, the 3½ millions spent on them within the three years may go far to account for the 4½ millions of deficit. In other words, it may be said that the balance of the loan after defrayal of the reproductive works expenditure—which balance amounts to just 3½ millions—has gone to make good in part the deficits between income and ordinary expenditure.

From this point of view we might hold that had it not been for the barracks, the deficits on ordinary income and expenditure would not have occurred, and these loans would not have been necessary. But it would thence follow that the new barracks have for the most part been constructed from borrowed money.

When my Right Hon'ble predecessor (Mr. Massey) spoke of surplus or equilibrium during these years, he was correct according to the view then adopted, whereby the barracks were excluded from the account. Now, however, that it has been decided, with the express sanction of the Secretary of State, that these are to be included, we must face the plain fact that we have been and still are in a state of deficit. It is essential to place this fact in a clear light in order that we may adequately arrange for the coming year. For the difficulty, though not serious, is yet such as to demand decisive measures for its immediate termination.

But while giving this explanation in justice to what has been previously done, I do not at all mean to admit that the barracks *ought* to be selected as *the* cause of deficit. On the contrary, I say that barracks ought *not* to be thus singled out from our general expenditure.

Before quitting the present year, I must crave a few moments for the mention of one or two administrative measures connected with finance.

The circulation of the State paper currency has now risen above 10 millions, it has more than once approached 11 millions. When the Government took this matter up six years ago, the total note circulation of the several Presidency Banks amounted in all to 3½ millions. Within this period, then, the circulation has trebled, and has now reached to about one-third of the amount, 30 millions, which its founder, Mr. Wilson, contemplated as the possible limit to which paper currency in India might ultimately expand. It has established itself not only at the Presidency towns, but at the great centres of the interior of the country, such as Allahabad, Lahore, Nagpore, and Kurrachee. During the year, we have, by purchasing ¾ million of public securities—virtually reducing the national debt by that amount—raised that portion of the reserve from 3¼ millions to 4 millions, the limit allowed by law. This measure was justified by the steady expansion of the circulation. The gross profits to the State from the Currency Department will amount to £170,000 annually. The notes, too, are used by merchants to the value of some millions annually for purposes of remittance, whereby great convenience has accrued to trade. Further improvements in the arrangement of circles of issue in order to facilitate the convertibility of the notes are under consideration.

The amount realized from the sale of waste lands now amounts to £300,000. This has been invested in Government Securities, public debt to this amount being regularly cancelled. This seemed necessary in order to give full effect to the intention of the law.

The provision of an effective gold currency for India has engaged our earnest attention. The offer of 10 Rupees for the sovereign at our treasuries by the Notification of 1864 having been found by experience to be insufficient to attract sovereigns and to fulfil the declared intention of facilitating the circulation of that coin, we determined in November last, to offer, 10 Rupees and 4 annas for the sovereign—a rate more nearly approaching to its intrinsic and market value. This measure has met with some success, for already upwards of 100,000 sovereigns have been received at our treasuries and taken out again by the public. We have also removed the prohibition existing since 1852 against

receiving at our treasuries the gold pieces coined under Act XVII of 1835, of which coin numbers (more than 1½ million) have been and still are being coined at our mints in exchange for gold bullion received from the public; a sure proof of the popular demand for them. Thus, by improving the rate offered for the sovereign; by assimilating it to the standard established by law for coinage of gold in India; by restoring the status which the Indian gold coins properly possess, and which they only lost casually in 1852, we hope to obtain such a circulation of gold coins in India as may hereafter justify their being declared to be legal tender. I cannot pass from this topic without recounting the aid derived from the special knowledge and experience of Mr. Dickson, Secretary to the Bank of Bengal, and of our colleague His Excellency Sir W. Mansfield. Indeed, if India, by the means now adopted, shall enjoy the benefit of a gold currency, that will be largely owing to the exertions of His Excellency.

The Government Savings Banks at the three Presidency towns are flourishing: they have in all some 25,000 depositors, chiefly native, and some £650,000 of deposits. Their success has encouraged us to devise measures for the ramification of these institutions throughout the interior of the country.

The "Money Order Department," established on the model of similar departments in England, has attained a considerable development throughout India. Its transactions during the year amount to an aggregate of a million sterling. The further expansion of the system is under consideration.

In the Postal Department we have decided to carry half a tola, instead of the quarter tola, for ½ an anna. This concession to the public is justified by the increase of correspondence since the reform of the postage in 1854, the number of covers, public and private, having risen from 30 to 70 millions annually; the receipts from private postage having risen from £200,000 to 400,000 per annum, and the department having so extended as to cover 50,000 miles of communication and to number 20,000 employés.

Following the postal principle, we have substituted for the Electric Telegraph fixed rates for all distances, instead of the former tariff, variable according to distance. Accordingly, a message of ten words can be sent to any part of India for a rupee. It is hoped that a stimulus will be hereby applied to telegraphic communication in this country.

The prices commanded in the market by our Government Securities have been satisfactorily high. During the current year the premia on the Government 5 per cent. stock have ranged up to 10 per cent.; those on

the $5\frac{1}{2}$ per cent. stock up to 15 per cent. The prices of the Indian stock created in England appear to have been at least as favorable, perhaps even more so. These rates indicate that our credit stands as high as, or higher than, ever, and will bear comparison with that of other prosperous nations. Such facts, too, contrast happily with the state of things but a few years back, when our stock was at discount, and when our open loans would not fill! But this credit, so mighty a resource to Government as well as to individuals, can only be maintained by our ensuring public confidence in our firmness and resolution to produce an equilibrium of income and expenditure.

I must acknowledge, after trial and proof, the remarkable improvements introduced into our system of audit and account by the commission from England, consisting of Messrs. Foster and Whiffen, appointed at the instance, and acting under the supervision of my predecessor Sir Charles Trevelyan.

I have given much thought to a subject which has long engaged the attention of the Government of India, namely, the financial relations between the Central Government of India and the Local Governments of Madras and Bombay. I cannot say more at present, as the question is still under consideration.

I have now cleared the way for dealing with the third and the most interesting part of my subject, namely, the budget estimate for the coming year, 1869-70. I shall touch first on the receipts and then on the expenditure.

The total of the revenues for the coming year is taken at $49\frac{1}{3}$ millions, being a little over the amount which we are receiving for the present year. This total of $49\frac{1}{3}$ millions is the highest at which the revenues of British India have ever been set down, and it exceeds by $\frac{3}{4}$ million the budget estimate presented this time last year. The Council will be doubtless gratified to see that I am able to present such a statement. Still a glance at the main items of revenue will show that the estimate is scrupulously moderate. The great heads of Land Revenue, of Customs, of Salt, of Opium are all taken at fairly low figures. If the seasons had been less unpropitious than they have been, then these amounts might have been higher. If we shall hereafter be blessed with copious and timely rain, the estimate of income may be fortunately exceeded.

Regarding those items which depend on the state of trade, we have framed our estimate after consulting all the best informed authorities on the spot, and after revising the tariff valuation, in order to suit the depressed prices obtained for various staples of commerce.

Regarding those items which depend on the state of the harvests, we have looked to the consequences of the drought by which some parts of India have been suffering. The recent rains—life-sustaining, though so long delayed—with which the country has been refreshed, have no doubt improved our prospects. The gloom, which overspread some provinces has been brightened, and drooping spirits have been resuscitated among an industrious population which had for months been gallantly struggling with adverse circumstances, alternating between hope and despair, and striving with fortitude, diligence, and foresight to supplement artificially those resources which the natural seasons had failed to afford. At this crisis the railways have been of signal service to humanity, for they have carried, first and last, some fifty thousand tons of grain food to the hunger-stricken districts during this season. The Ganges and Jumna canals, too, have during the year nearly doubled their irrigation, and have watered nearly a million of acres. So praiseworthy have been the efforts of the people that even now, at this late hour, it is thought that the worst for which we were so fully prepared may yet be averted, and that if only a bountiful rain shall be vouchsafed next season, the country will recover from the effects of the visitation. In that case, the agricultural resources on which our land revenue depends may not prove to be impaired, and the tolerably favorable estimates now presented may stand good. But if the next rains shall be at all unpropitious, and a second misfortune be piled upon the first, then the result will be too sad and serious for anticipation.

These considerations have specially affected the opium revenue. The province of Behar, the very home of the poppy, has been among the most drought-stricken districts of all. The crop, short last season, will be shorter still this season. The number of chests brought to sale this year has been below the standard* by some hundreds of chests; next year it may be deficient by some thousands. For Bengal opium the exact number of chests has been taken month by month. This number is certain for three-quarters of the year. The uncertainty is in the price to be realized per chest. The average price has been assumed at Rs. 1,330 (£133) per chest, that being about the average actually realized during the past three years, though less than the average, Rs. 1,380 (£138) per chest, obtained during the current year. For the Bombay opium, the full amount has been taken according to the experience of the present year. The total result of the opium revenue has been further tested by the gross average of the past three years, which, amounting to 8⅕ millions, sufficiently bears out the sum, 8¼ millions, now set down. Thus, although the sum estimated for the coming

* 48,000 chests.

year is ½ a million less than that which is being realized in the current year, and is below the average of the three past years, thus showing a really cautious estimate, yet it is as high a sum as could safely be taken in the face of the deficient supply with which we are but too certainly threatened. The Council will see that the whole of the expected revenue has been taken credit for without any reserve being formed.

The Government of Bengal is taking active measures for increasing the supply of opium for the China market to 50,000 chests annually, and for securing a reserve supply (of at least 10,000 chests) which may assure the public as to the quantity to be brought to sale, and may conduce to the checking of undue speculation in prices. There is fear that unless the supply can be improved next season after these two deficient seasons, the cultivation of the poppy in China itself will be stimulated. For some time past positive accounts have been received of the increase of this culture in China. So it is clear that unless Bengal produces enough opium, the Chinese will raise it for themselves. And if the Chinese will have opium, they may as well get it first rate from us, as second rate at home, and they may as well consume it taxed as untaxed. Again, if they do not procure it from us, they might procure it from other countries of Asia. The culture of the poppy in Persia is increasing, and some 4,000 chests are exported annually from that country to China. The propriety of substituting an open excise system in Bengal for the present direct governmental agency has been under consideration. But the propriety of such a change on either moral or practical grounds is not as yet established to our satisfaction. On the other hand, it is a serious thing to make a change in a case where such critical interests are concerned, where despite fluctuations the fiscal progress has been so great and so steady, and where the system works well to the satisfaction and contentment of the peasantry concerned in the cultivation.

The revision of the salt duties throughout India has engaged and is still engaging our anxious consideration. The inequality in the rates of duty and the market prices of such an article as salt in different portions of the empire is indeed to be deplored. But though there are present obstacles, financial and other, in the way of equalization, we shall bear this steadily in view as an object for ultimate attainment. But after all, what the northern people want, even more than reduction of duty, is increased facility of supply by the construction of railways to the saliferous tracts and by the encouragement of local manufacture of salt—to all which matters immediate attention is being afforded.

As the Council knows, there is a revision going on of the schedules of the Stamp duties; but no provision has been made for the fiscal effect of any changes, as they have not yet been finally determined.

The item of assessed taxes I shall reserve for separate mention after the balancing of income and expenditure.

Such, then, being the receipts, how stands the expenditure for the coming year?

The total of ordinary expenditure is set down at 49¼ millions, being some fifty thousand pounds below the total of receipts. In other words, there is a real equilibrium between expenditure and income sufficiently assured by the exhibition of a small surplus of fifty thousand pounds. This expenditure is 1 million *less* than the expenditure of 50¼ millions for the current year, 1868-69, incurred for precisely the same purposes, and thus accurately compared.

There is a slight increase, after every practicable retrenchment, in several of the Civil Departments. The Council would be wearied if I entered on the details of this. Suffice it to say that the demands for administrative improvement in every direction are irrepressible; and these involve expense. Again, the general rise in wages and in prices of all things, which have doubled or even trebled within the last few years and are still on the ascendant in most places, has for some time past caused, and is still causing, the former scales of pay and of salaries to prove insufficient. In justice to the many classes of its meritorious servants, the Government has been obliged to concede increase of emoluments to the employés of all grades, from the lowest upwards, in all departments, from 15 to 30 per cent. The only general exception to this has been the case of the Covenanted Civil Service, of which the emoluments remain much as they were.

There are only a few items of expenditure which need now be noticed. That for Police amounts to nearly 2½ millions. The Police of India under its new organization was originally estimated to cost 2 millions; the subsequent tendency to increase has been largely owing to the establishment of Municipal Police.* Much care will be needed if the sum total is to be kept down at its present figure. The educational grant stands at upwards of £900,000, or nearly a million, being slightly above the expenditure of the current year. The allotment for Law and Justice, including prisons, now exceeds 2¾ millions; and is

* For the charge for Municipal and Railway Police there is a set-off on the receipt side of £300,000 for municipal and railway contributions credited to the State.

constantly increasing from the creation of new courts and departments. The grant for medical services has risen about 15 per cent. within the last two years. This is owing to the substantial recognition of the medical profession by increased pay, and to the position which sanitation is fast asserting for itself. The cost of forest conservation is also rising: this is attributable to the organization of professional forestry, and to the husbanding of that vast wealth in timber with which Nature has endowed the continent of India.

The military expenditure in India is estimated at upwards of 12¾ millions, being almost the same amount as that which is shown for the current year. This is of course exclusive of some 3¼ millions of expenditure in England. The sums of 21 and of 16 millions are the highest annual figures which our military expenditure in India has reached. After the great retrenchments which took place between the years 1860 and 1863 upon the above amounts, the sum of 12¾ millions (in 1863-64) is the lowest figure to which our military expenditure in India has fallen. Since then the charge has slightly increased, notwithstanding that the European force has been reduced by some 7,000 men. It might be expected that such a reduction of force would have caused a considerable reduction of expenditure. Instead of this, however, there has been an *increase*, despite constant efforts to keep down the charges,—a fact which points to the need for redoubled economy. The increase, so much to be regretted, is in part attributable to unavoidable causes, such as;

the warrant regarding the clothing and pay of the European troops and the inducements to re-engagement at an earlier date;

the increased subsistence allowance to the wives and families of European soldiers;

the additional pay allowed to native commissioned officers; the grant of good conduct pay to the sepoys at an earlier date; the continuance of batta to men on leave; the increased rates of hutting money;

the increased pay of medical officers, of the medical staff and establishment, the re-organization of the warrant or subordinate medical establishment;

the abolition of half batta;

the net cost of the staff corps;

the compensation to native troops for dearness of provisions.

These main items have caused an increase of annual charge by £950,000, to counterbalance which further savings are required, if such can possibly be

made. Certainly there are categories of increased charge which call for restraint. The commissariat charges, though in some places creditably economical, are hardly so in all places. The charges of the hospital departments, of the ordnance, of the barrack department, of the stud, of the army and garrison staff, are constantly mounting upwards.

The charge which some years hence will accrue to the State from the present organization of the staff corps of India has engaged our anxious care. The question as to what measures should be adopted in respect hereto is still under consideration.

Doubtless the growth of army expenditure, though slight and gradual, requires check in every branch and detail, which check we shall assiduously apply.

For public works ordinary, exclusive of railways, the allotment stands at 5¾ millions, being just over the amount expended in the current year, and being about the largest grant ever yet made for this important object. It includes nearly 1½ millions for the military buildings, of which the importance has been already explained—an amount which will enable the engineers to maintain the present rate of progress. This category includes all the expenditure for these buildings, of which not a farthing has been transferred to the heading of extraordinary. Further, in public works ordinary, including railways, every kind and sort of item has been included, save those for new irrigation works, for the Bombay special fund, and for State railways, which three items alone have been classed as extraordinary.

The guaranteed interest on railway capital, less net traffic receipts, stands at 1½ millions, making up to about 15 millions the amounts which the Government of India from first to last has paid for the cardinal advantage of possessing railways in the country. Inasmuch as the outlay for the thousands of miles of line yet to be constructed will be going on to the amount of 3 or 4 millions annually, it is calculated that this item of 1½ millions for guaranteed interest will not decrease for many years to come, but may increase to 1¾ millions. It is manifest that much depends on the administration of the railways, the merits or demerits of which might easily make a difference of ¼ or ½ a million in the State budget of the year. The growing importance of railway finance will hence be apparent to the tax-payers of India. After deduction of the working expenses from the estimated traffic earnings of the coming year, it is calculated that the East Indian Railway will be paying 4½ per cent. on paid-up capital, the Great Indian Peninsular 3 per cent., the Madras Railway 3 per cent., and the other lines from

1 to 2 per cent. It seems clear that some of the lines will certainly pay the 5 per cent., and will relieve the State of its guarantee obligation on more than half of the capital as yet laid out. But the remainder will not pay for some time to come—involving perhaps one-third of the aggregate capital, on which the State will have to pay permanently a part of the guaranteed interest. It is well to remember this, inasmuch as within the next ten years another 30 millions on railways may probably be expended.

Such, then, is the ordinary expenditure for the coming year, which has not been allowed to overbalance the income. But in order to explain exactly how this equipoise has been obtained, I must ask the Council to revert to the item of assessed taxes, of which I just now promised a further notice.

It will be seen that £900,000 are set down as the anticipated produce of assessed taxes for the coming year. The certificate tax of the current year is expected to yield £520,000. The same tax, had it been continued for the coming year, is supposed to be capable of yielding as much or more, say £550,000. But to this has been added £350,000, making up the total of £900,000 shown in the budget. Now, by what means is the extra £350,000 to be obtained? Why, by converting the certificate tax into an income tax. Without this resource our income would fall short of our expenditure by more than ⅓rd of a million, and a deficit to that extent would have been exhibited in this budget. The Government of India, after considering the deficiencies which have occurred in three consecutive years, as I have already explained this day, and after causing the accounts to be made up according to the orders of the Secretary of State, has determined, so far as in it lies, to put an end to deficit. We cannot, at such a time as this, consent to appear before the public with a deficit in our budget. We have therefore preferred the alternative of asking this Council to vote us the power to cover by an income tax the deficit which must otherwise be presented. Such, then, is the proposal which I shall have, on behalf of the Government of India, to submit to the Council, together with a request for leave to introduce a bill for the purpose. The necessity of avoiding debt in time of peace for ordinary expenditure, and of plainly making both ends meet, is the ground on which we mainly base this proposal. The probable occurrence of this necessity was foreseen some months ago, and a reference was made by us to the Secretary of State, whose approval has been received to the course which we propose to adopt.

The principle of the existing certificate tax is in fact that of an income tax on particular classes, so that the substitution of an income tax proper will prac-

tically not much alter the taxation of those who pay the certificate tax. The taxation will be virtually extended to those sections who are now exempt, and will apply equally and justly to all sections alike without distinction. Moreover, the principle of rough assessment, as observed in the certificate tax, should, we think, be maintained, with some modification of detail, in the schedule of the income tax. The mean incidence of the certificate tax was about 1 per cent. on profits; we propose to keep this rate for the income tax also. The limit of income down to which the certificate tax descended, Rs. 500 (£50) per annum, will be observed in the income tax. Servants of Government or of Companies, as well as those of firms and private individuals, were exempted under the certificate tax if their salaries were less than Rs. 1,000 for the year. For the former class the assessment will now be at 1 per cent. on all salaries of Rs. 41-10-8 per mensem, equal to Rs. 500 per annum, and upwards. The latter class will be assessed like their neighbours under the schedule. Pensions and annuities will be similarly assessed. We have introduced various minor improvements intended for the convenience of the tax-payers.

The advantage of keeping up the principle of rough assessment in the schedule is the avoidance of individual assessment, of any inquisitorial process which such assessment may involve, and of the demand for returns of income. The advantage of adhering to the 1 per cent. rate will be this, that those who pay the certificate tax will continue to pay much in the same way as heretofore, without any sensible change, and the avoidance of change is well known to be an important point in dealing with the Natives of India. The advantage of observing the 500 Rupees (£50) minimum limit of income will be this, that the measure will be confined to the upper and middle classes, and will not affect the mass of the people. In that respect the new income tax will be preferred to the old, which went down so far as Rs. 200 (£20) of annual income. It is calculated that not more than 150,000 persons will be assessed to this income tax, out of 150 millions of population, so that the tax will hardly touch more than one in a thousand. In short, our hope is that by eschewing change in respect to those who now pay a direct tax; by refraining from demand for returns; by removing the measure from any contact with the poorer and more ignorant classes, we shall keep it comparatively free from much of the unpopularity which attached to the income tax of 1860, and thus, as it were, rob the measure of its sting.

Should it be thought that the arguments, if good for anything, are good for a 2 per cent. rather than a 1 per cent. rate, the answer is that 1 per cent. seems to be sufficient. It produces an equilibrium after a fair allowance for the

defence and administration of the country, and for moral and material improvement, and after including enough for military buildings to ensure the present rate of progress. The Council will remember that all other taxes ever contemplated have been condemned; that the income tax is our chief fiscal reserve; that in war or other emergency we could hardly assess it at more than 5 per cent., so that now in time of peace we are to use up $\frac{1}{5}$th of our fiscal reserve. It is desirable not to trench more than is absolutely necessary on such a reserve. It is also desirable not to ask the country to bear even a fraction weight of burden more than can be proved to be indispensable.

If it be said that sufficient care is not given to retrenchment of expenditure, and that by a little more cutting and clipping a small deficit might be obviated without putting on an income tax, the answer will be that retrenchment has been already pushed to its reasonable extremity in order to cut the coat of our expenditure according to the cloth of our income. It is perhaps a curious fact that when the materials of this very budget were received from the eight local Governments, the twelve imperial departments, the 225 treasuries, and were collated in the Financial Department at Calcutta, the revenues came out less, while the ordinary expenditure proposed was more, showing a balance against the country. This adverse account has by scrutiny in the Financial Department, and by help of the later and more complete information available to us, been reduced to the equilibrium now presented to this Council. After all, the expenditure in India is taken at less by half a million than what it is for the current year. This may be accepted as some proof of economy in the budget. Further than this we cannot retrench at present. If we were to do so, the parties concerned would during the course of the year remonstrate, and we might be virtually forced to allow items which had been disallowed. We hope to maintain the retrenchments so carefully made; but it would be worse than futile to attempt any retrenchment which cannot be maintained.

If it be supposed that we might have devised other means of improving our resources and thus saved the necessity of an income tax, then I say that no supposition could be more unjust to the Government of India. For we have over and over again thought of every tax that has ever been suggested;—to almost all some insuperable economic objection was apparent—the income tax alone remaining comparatively free from objection, as hampering no particular trade and fettering no industry. We have even refrained from doing some things we wished to effect, such as the abandonment of some of the export duties which are shackles on our domestic industry, the diminution of the rate of import duty on some metals of which the prices are depressed;

the abolition of the inland sugar duties, the reduction of the salt duties in some provinces. We really have postponed the fulfilment of these our cherished desires, in order that the saddle of the income tax might sit lightly and easily on the country.

If it be urged that there is hardship in the imposition of an income tax, when the necessity might be avoided by transferring the cost of the new barracks to the extraordinary category, inasmuch as the work, though heavy now, will soon be finished off and disappear—this argument has been already answered to-day. It suffices to recapitulate that there is no sort of reason why barracks should be selected in such an arrangement more than any other item of our ordinary expenditure; that the work will not be done for years and years to come; that when it is over, other works just as costly will be turning up; that the European troops must be properly housed; that the housing of our soldiers is among the very first charges against our revenues; that the running into debt for such a purpose would be intolerable; that we *must* pay our way to this extent in time of peace, if we are to prove worthy of our status as a Government; and that any such arrangement would be contrary to the orders of the Secretary of State.

Again, if it be argued that the income tax, having been first imposed when the finances were in disorder, ought not to be reimposed now when the finances are flourishing, the reply would be that experience does not show that we can afford altogether to dispense with direct taxation. For, when after a period of deficit a short period of surplus enabled Sir Charles Trevelyan to allow the first income tax to expire, there followed but one year of surplus. Then sure enough deficit reappeared, and Mr. Massey was obliged to propose a license tax (1866-67). Thus, no sooner had the income tax expired, than its resuscitation in another form became necessary. The license tax having lasted for a year, Mr. Massey resisted all demand for its repeal, and continued it in an improved form as a certificate tax. That he was perfectly wise in so doing is proved this day, when I have to come before the Council with the longest story of deficit that has been narrated for some years. The moral of all this is, that the great convulsion of 1857, so fraught with trouble, yet so fruitful in reform, does to this hour make its effects felt, and that the country must brace itself to bear the small sacrifice of a light income tax in consequence.

Lastly, though this income tax is applicable to all alike above a certain limit of income, there are some important classes who immediately occur to our thoughts such as the fundholder in India, the landholder and houseowner, who will be required to aid in bearing a burden already borne for the last two

years by several classes of their fellow subjects. The fundholder in India, conscious that the value of his property in the market so largely depends on the financial credit of the Government, will not demur to a contribution to a tax which in England has been always held to be applicable to income from the public securities. The landholders, especially the zemindars under permanent settlement, convinced from long experience of the inviolable faith kept with them by the State, cannot regard this measure with any distrust, but will submit to the law, if it shall be enacted, with that loyalty which befits gentlemen of accumulating wealth and of liberal education, recollecting that the question of their liability was thoroughly settled long ago, and that in each cycle of years the progress of Bengal—with its staples profitably exported to England, its network of water communication, its patient and thriving peasantry—enhances their debt of gratitude towards the Government under whose sway their property has been so vastly benefited.

The European community for the most part already pay the certificate tax. Their taxation will be changed but little if at all by the income tax. They have shown so much public spirit in respect to direct taxation whenever its necessity was demonstrated, and they are so well aware that financial solvency is one of the first conditions of our political safety in this country, that their support on this occasion is confidently anticipated.

And everybody, European or Native, will, we trust, appreciate the justice of taxing all classes alike without exception.

The question of allotting to the Local Governments a portion of the income tax proceeds for public works has been considered; but the concession cannot at present be made.

So much then for the ordinary income and expenditure.

Besides this, however, there is a proposed extraordinary expenditure of 3½ millions, of which 2¾ millions are for the irrigation works, and the rest for the Bombay special works and the State railways. The amount may seem large: but it includes 1 million to be paid in England for the transfer to Government of the Irrigation Company's projects in Orissa and Behar: and ¼ million of stores and plant for the Lahore and Peshawur railway. This full sum, if sanctioned by the Secretary of State, will have to be raised by loan. The expenditure in India of 1½ million on irrigation is to be mainly for the noble projects in Orissa, in Behar, in the Cis-Sutlej States, in the basins of the Jumna and the Ganges in Lower Bengal, in the British Deccan, and in other places. This will be the first year in which the principle of borrowing for reproductive works

comes into something near full operation. It must be some time before any return is received for this outlay. And for fear of going too fast ahead, we should pause before exceeding the amount proposed for loan this year. The original cost of these works is already shown in our Budget Statements; the question as to how far it may be possible to show separately the gross income and the current expenses of these reproductive works, is undergoing careful consideration.

Indeed we are launching out on a sea of improvement. The next ten years may see another 40 or 50 millions for reproductive improvements added to the existing 100 millions of our national obligations. Can any fact be more potent than this to prove that we must gird ourselves for the task before us, by establishing that equilibrium between income and *ordinary* expenditure which will be the surest basis of our public credit.

The total expenditure for the year, ordinary and extraordinary, is put at 52¾ millions, the highest figure ever yet reached. It has been sometimes observed that our present form of Budget Statement, (which is, however, authoritatively prescribed,) by showing the expenditure in England in the aggregate, does not exhibit in one view the cost of some great departments whose expenses are incurred partly in England and partly in India. I append a supplementary statement showing the combined expenditure, English and Indian, of the several departments. In this point of view, the cost of the army stands at a little over 16 millions; that of marine at something under 1 million; and the interest on the public debt at 4¼ millions, of which the sum of £180,000 is on capital raised for reproductive works.

I have now to mention what loan arrangements will have to be made in order to meet all this expenditure. On the one hand we have to provide for 3½ millions for reproductive and extraordinary public works as above described; ½ million of public debt to be renewed in England and ½ million in India, or one million to be renewed in all; ½ million to be raised in India to recoup our cash balances for sums lent or to be lent to the Municipalities of Calcutta and other places. These items amount in all to 5 millions, or 3½ millions of new debt, 1 million renewal of former debt, and ½ million of debentures at short currency, which will not add to the permanent debt. These are all subject to the approval of the Secretary of State. On the other hand, 2 millions have already been set down by the Secretary of State to be raised in England. We propose to raise in India ½ a million on long term debentures in renewal of existing obligations; and to issue debentures for

short terms not exceeding one twelve-month, of the nature of exchequer bills, up to ½ a million. By the latter issue we hope to provide for the temporary requirements of the cash balances without trenching on the resources of the Presidency Banks. There remain two millions to be raised, regarding which we shall immediately solicit the instructions of the Secretary of State. In these various ways the amount of 5 millions above stated will be provided for. If we shall have to advance any additional sums to Municipalities during the year, such amount will have to be raised by loan.

With these several arrangements (which are subject, of course, to the sanction of the Secretary of State) we shall probably close the coming year with a cash balance of 11½ or nearly 12 millions, much the same as that with which we are closing the current year. These amounts indicate that our cash balances are not even yet restored to their proper proportions. By the experiment of issuing short term debentures, as above mentioned, we hope to work with a somewhat less cash balance than heretofore. If as the year proceeds the accounts shall be unfavorable, some additional temporary resource will have to be provided.

The last statement to be noticed is that of the cash balances in India. This statement includes not only all the regular receipts, and disbursements in India besides the remittances to England, but also all the "debt," or, as it might better be called, the "deposit." This technical debt has nothing to do with the public or national debt, but it arises in this way. In some respects our Exchequer serves as a great bank of deposit. It receives and keeps the money belonging to the local funds, to the funds, pensionary and others, of the Services civil and military; to the Judicial department; and to a variety of depositors. It serves as general banker to the railways and receives all their traffic earnings. It also acts as a banker for much of its own remittances. In these several ways there is made up a vast aggregate of many millions of deposit receipts shown on one side of the account, balanced by a corresponding amount of disbursements on the other. We shall commence the new year on the 1st April with a cash balance of close upon 12 millions; we hope also to end it with a sum of nearly 12 millions. On the receipt side of the statement there are upwards of 49 millions of revenue; 3 millions to be raised by loan; some 13 millions of deposit, of which latter the 3 millions of our local funds income forms a part. The above 3 millions of loan is exclusive of the 2 millions to be raised by the Secretary of State, which have been allowed for on the other side of the account. Then there are some 3½ millions of other receipts, railway earnings and the like. All these, together with the cash

balance in hand, make up the grand total to 80 millions. This is balanced on the disbursement side by some 43 millions for service in India; by some 14 millions on account of debt and deposit, including some 3 millions expenditure from local funds; and some 11 millions of other payments, including those for the Secretary of State's bills; all which, together with the cash balances, make up a counter sum of 80 millions.

Thus, for the coming year 1869-70, the national balance sheet of British India, including all the transactions of its Exchequer, shows 80 millions on each side of the account, truly a high figure demonstrative of the calibre of our power in the East! And now, with the mention of this spirit-stirring fact, I shall conclude my exposition.

Such is the budget for 1869-70. The main points of the exposition are;

that the entire expenditure on the new barracks is included in ordinary expenditure and charged against revenue;

that on the two years under review, 1867-68 and 1868-69, there has been an actual deficit in 1867-68 of 1 million of income as compared with ordinary expenditure, following a deficit of 2½ millions on the total expenditure the previous year, 1866-67;

that for the year 1868-69 there is a deficit by regular estimate of 1 million;

that for the coming year, 1869-70, after including barrack expenditure, there is estimated an equilibrium between income and ordinary expenditure sufficiently assured by a small surplus;

that a one per cent. income tax is proposed in substitution for the existing certificate tax;

that 3½ millions are proposed to be expended in 1869-70 on extraordinary reproductive works to be provided for by loan;

that 3½ millions are proposed to be raised by loan;

that 1 million of public debt, half in England, half in India, falling due for re-payment in 1869-70, must be renewed;

that ½ million is to be raised by short term debentures to supplement the cash balances;

that the total of loan proposed for the service of the year 1869-70 amounts to 5 millions.

The Government of India has aimed at a financial policy to be at once safe, just, and sound. Safe, as strictly bringing to account of ordinary expenditure, all items properly so chargeable. Just, as tending to apportion more and more equally the fiscal burden between rich and poor. Sound, as guiding all proposals according either to known custom in India or to established principle in England.

The facts and figures of British Indian finance, hard and stern as they may be, do yet bear witness to an agriculture furnishing staples for the use of distant countries; a commerce multiplying itself in every cycle of years; a revenue branching out in various forms of development; an ordinary expenditure held in control, and expanding mainly for useful or beneficent purposes; an extraordinary expenditure designed to bring State capital to bear on the material improvement of the country; a public credit strong enough to constitute a resource for every reasonable need. By their general effect they recall the sentiment of the historian, they excite thankfulness in all thoughtful minds, and "hope in the breasts of all patriots."

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE having then applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then introduced the Bill.

POLICE SUPERANNUATION FUNDS' BILL.

The Hon'ble SIR RICHARD TEMPLE then introduced the Bill to abolish the Police Superannuation Funds.

TRANSSHIPMENT OF OPIUM FEE BILL.

The Hon'ble SIR RICHARD TEMPLE then moved for leave to introduce a Bill for imposing a transshipment fee on Opium.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then introduced the Bill.

LAND CUSTOMS' BILL.

The Hon'ble SIR RICHARD TEMPLE then moved for leave to introduce a Bill to make better provision for the collection of Land Customs on certain foreign frontiers of the Presidencies of Fort Saint George and Bombay.

The Motion was put and agreed to.

CUSTOMS DUTIES' BILL.

The Hon'ble SIR RICHARD TEMPLE then moved for leave to introduce a Bill to amend the law relating to Customs' Duties.

The Motion was put and agreed to.

The Council adjourned till the 11th March 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. General for making Laws and Regulations.

CALCUTTA,
The 6th March 1869.

APPENDIX.

STATEMENT OF ESTIMATED CASH BALANCES IN THE INDIAN TREASURIES ON THE 31st MARCH 1870.

RECEIPTS IN INDIA IN 1869-70.	BUDGET ESTIMATE.	DISBURSEMENTS IN INDIA IN 1869-70.	BUDGET ESTIMATE.
	£		£
REVENUES	49,340,840	EXPENDITURE IN INDIA	43,157,540
DEBT—		DEBT—	
To be raised on Loan	3,000,000	Payments on account of Debt	13,712,792
Receipts on account of Debt	12,408,724	LONDON—	
		Bills drawn by the Secretary of State for India	8,400,000
LONDON—		Payments on account of Indian Railways	3,255,100
Recoveries in India of Payments in England, Funds, Family Remittances, &c.	1,199,760	Ditto Madras Irrigation and Canal Company... ...	5,500
Madras Irrigation and Canal Company net Earnings ...	7,600	Supplies to Her Majesty's Government	128,300
Net Railway Earnings	2,604,700	Miscellaneous	192,555
Estimated Cash Balances on 31st March 1869	11,917,473	Estimated Cash Balances on 31st March 1870	11,627,310
TOTAL ...	80,479,097	TOTAL ...	80,479,097

FORT WILLIAM;
Financial Department,
The 6th March 1869.

EDWARD GAY,
Offg. Dy. Comptr. Genl. of Accounts.

E. F. HARRISON,
Comptr. Genl. of Accounts.

R. B. CHAPMAN,
Offg. Secy. to Govt. of India.

GENERAL BUDGET

FOR THE

GENERAL ABSTRACT OF THE REVENUES AND

FOR THE YEAR FROM 1ST

RECEIPTS.	Actual, 1867-68.	Budget Estimate, 1868-69.	Regular Estimate, 1868-69.	Budget Estimate, 1869-70.
	£	£	£	£
I.—Land Revenue	19,986,640	20,466,000	20,225,200	20,595,500
II.—Tributes and Contributions from Native States ...	689,286	687,000	693,800	693,200
III.—Forest	331,088	403,900	423,600	436,600
IV.—Excise on Spirits and Drugs	2,238,931	2,211,600	2,310,000	2,289,000
V.—Assessed Taxes	653,848	570,000	520,000	900,000
VI.—Customs	2,578,632	2,441,600	2,713,500	2,773,500
VII.—Salt	5,726,093	6,016,900	5,613,100	5,826,800
VIII.—Opium	8,923,568	8,385,800	8,886,400	8,286,540
IX.—Stamps	2,186,269	2,372,800	2,340,200	2,396,900
X.—Mint	120,252	251,200	163,300	136,800
XI.—Post Office	659,679	671,300	687,600	687,500
XII.—Telegraph	215,031	252,600	218,700	220,000
XIII.—Law and Justice	719,342	1,034,200	1,082,000	865,100
XIV.—Police	231,972	274,300	286,500	301,400
XV.—Marine	455,090	294,500	578,600	248,500
XVI.—Education	73,845	75,100	73,800	83,400
XVII.—Interest	211,975	226,500	231,700	261,600
XVIII.—Miscellaneous	1,127,551	763,200	750,600	966,700
Army—Miscellaneous	742,712	692,400	829,400	730,000
Public Works—Miscellaneous	557,840	496,000	660,700	641,800
TOTAL RECEIPTS ... £	48,429,644	48,586,900	49,288,700	49,340,840
Deficit, including Public Works Extraordinary Charges £	1,610,157	1,026,450	2,801,244	3,513,150
GRAND TOTAL ... £	50,039,801	49,613,350	52,089,944	52,853,990
Deficit, not including P. Works Extraordinary Charges £	1,007,695		970,471	... ..

FORT WILLIAM;
FINANCIAL DEPARTMENT,
The 6th March 1869.

EDWARD GAY,

Offg. Depy. Comptr. Genl. of Accounts.

ESTIMATE OF INDIA.

YEAR 1869-70.

RECEIPTS AND OF THE EXPENDITURE OF INDIA

APRIL 1869 to 31st MARCH 1870

EXPENDITURE.	Actual, 1867-68.	Budget Estimate, 1868-69.	Regular Estimate, 1868-69.	Budget Estimate, 1869-70.
	£	£	£	£
1.—Interest on Funded and Unfunded Debt	2,709,972	2,699,700	2,684,200	2,794,770
Interest on Special Loans for Public Works ...	51,861	99,000	99,000	
2.—Interest on Service Funds and other Accounts ...	824,113	517,330	589,830	518,710
3.—Allowances, Refunds, and Drawbacks	376,466	231,940	502,740	259,370
4.—Land Revenue	1,995,950	2,138,700	2,076,380	2,196,790
5.—Forest	226,416	278,080	270,250	284,850
6.—Excise on Spirits and Drugs	303,534	261,900	272,890	263,050
7.—Assessed Taxes	33,314	21,000	20,050	30,000
8.—Customs	207,186	186,150	183,480	182,640
9.—Salt	325,520	411,660	389,770	395,270
10.—Opium	1,874,121	1,907,780	1,769,330	1,724,330
11.—Stamps	92,950	101,100	99,820	96,410
12.—Mint	99,366	109,500	95,020	86,470
13.—Post Office	491,690	583,480	617,200	706,120
14.—Telegraph	396,517	442,500	482,310	447,000
15.—Allowances to District and Village Officers ...	385,981	396,520	396,650	315,530
16.—Administration and Public Departments	1,124,396	1,140,220	1,148,210	1,205,090
17.—Law and Justice	2,544,349	2,857,580	2,782,910	2,869,670
18.—Police	2,434,125	2,502,450	2,436,290	2,374,290
19.—Marine	926,539	558,800	681,630	473,390
20.—Education, Science, and Art	783,510	901,190	855,160	912,200
21.—Ecclesiastical	158,707	162,520	162,760	169,100
22.—Medical Services	352,316	366,970	376,710	413,080
23.—Stationery and Printing	222,729	226,400	228,770	227,790
24.—Political Agencies and other Foreign Services ...	241,801	231,050	236,730	235,590
25.—Allowances and Assignments under Treaties and Engagements	1,873,072	1,948,090	1,912,770	1,886,190
26.—Miscellaneous	672,992	270,700	416,000	393,390
27.—Superannuation, Retired, and Compassionate Allowances	911,256	633,360	827,130	711,600
Army	12,603,467	12,904,720	12,803,220	12,850,000
Public Works Ordinary—				
Public Works	5,430,457	3,458,480	5,640,000	5,677,000
Supervision and Cost of Land for Railways ...	156,525	221,390	303,640	159,450
Loss by Exchange on Railway Transactions ...	101,877	122,700	29,700	14,600
One per cent. Income Tax Grant	111,410	.....	.....	.....
	41,044,485	38,925,960	41,390,550	40,903,740
Net Expenditure in England, including Stores ...	6,852,419	6,392,400	7,191,591	6,856,750
Guaranteed Interest on Railway Capital, less Net Traffic Receipts	1,540,435	1,202,900	1,677,030	1,527,700
TOTAL ... £	49,437,339	*46,521,260	50,259,171	49,288,190
Public Works Extraordinary—				
Military	.....	1,363,880	Included under Public Works Ordinary.	
Communications	.....	431,210		
Embankments	.....	27,000		
Irrigation Works { In India	219,255	800,000	852,500	1,650,000
Irrigation Works { In England	.....		14,000	1,055,000
Special Fund Works	382,613	470,000	420,000	500,000
State Railways ... { In India	594	.....	213,300	103,800
State Railways ... { In England	.....	.....	330,973	257,000
TOTAL ... £	602,462	3,092,090	1,830,773	3,565,800
TOTAL EXPENDITURE £	50,039,801	49,613,350	52,089,944	52,853,990
Surplus, including Public Works Extraordinary Charges £	.....	.....	.....	.....
GRAND TOTAL ... £	50,039,801	49,613,350	52,089,944	52,853,990
Surplus, excluding Public Works Extraordinary Charges £	.....	2,065,640	.....	52,650

* Total, including transfers from P. W. Extraordinary £48,343,350.

E. F. HARRISON,

Comptroller General of Accounts.

R. B. CHAPMAN,

Offg. Secretary to Govt. of India.

BUDGET ESTIMATE OF EXPENDITURE IN ENGLAND AND IN INDIA FOR 1869-70.

	Expenditure.		Total.
	In India.	In England (Net).	
	£	£	£
Interest on Debt	2,794,770	1,504,250	4,299,020
Civil Departments	18,931,530	1,570,442	20,504,972
Military...	12,850,000	3,202,061	16,052,061
Marine	473,390	409,837	883,227
Public Works—Ordinary ..	5,851,050	170,160	6,021,210
TOTAL ...	40,903,740	6,856,750	47,760,490
Guaranteed Interest on Railway Capital, less Net Traffic Receipts	.....	1,527,700	1,527,700
	40,903,740	8,384,450	49,288,190
Public Works Extraordinary ...	2,253,800	1,312,000	3,565,800
GRAND TOTAL ...	43,157,540	9,696,450	52,853,990

EDWARD GAY,
Offg. Dy. Comptr. Genl. of Accts.

E. F. HARRISON,
Comptr. Genl. of Accts.

R. B. CHAPMAN,
Offg. Secy. to the Govt. of India.

FORT WILLIAM;
FINANCIAL DEPARTMENT,
The 6th March 1869.

Office Supdt. Govt. Printing.—No. LC—12-3-69—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 11th March 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C. S. I.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádúr, K. C. S. I., of Balrámpúr.

The Hon'ble G. S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

The Hon'ble J. N. Bullen.

INCOME TAX BILL.

The Hon'ble SIR RICHARD TEMPLE said—"I have now to move that the 'Bill for imposing duties on incomes and profits arising from offices, property, professions, and trades,' which has been before the Council since Saturday last, be referred to a Select Committee, with instructions to report upon it on the 20th instant, on which date it is my present intention to ask your Excellency to suspend the Standing Orders, so as to enable the Council to pass the Bill, as it may be amended, into law.

The general procedure and plan of the Bill is that of the License Tax Act of 1867, and the Certificate Tax of 1868 suitably modified to adapt it to a pure Income Tax.

The exemptions allowed by the Acts of 1867 and 1868 have been for the most part swept away; the only exception being the pay and allowances of Military men not in Civil employ whose pay and allowances do not exceed Rs. 500 per mensem, and property dedicated to religious and charitable public uses. These exemptions, which are based upon principles of general policy, and which have descended to us from the Income Tax Act of 1860, we have somewhat reluctantly resolved to continue.

A general power of exemption is also reserved to the Government of India as before; but it is not intended to exercise it, except in favor of tribes whom it may be desirable to exempt on political grounds, or of classes who already pay any special imperial tax of the nature of an Income Tax. Military, Non-Commissioned, and Warrant Officers in Civil employ, the Officers and men of the Police Force, Assistant Chaplains, and such persons will not be exempted from the tax imposed by the Bill.

The minimum limit of salaries liable to the Certificate Tax of last year was Rs. 1,000 per annum; under the Income Tax the minimum limit will be the same as that of other profits, *viz.*, Rs. 500 a year. The tax upon salaries, annuities, and pensions being precisely computable without any returns, will be levied as under the Acts of 1867 and 1868 at exactly one per cent. As a compensation for this precision, which may, no doubt, sometimes press with comparative severity, the existing procedure is preserved, by which the tax upon such incomes is recovered by monthly deductions. The scope of this part of the Bill has been enlarged so as to include annuities and pensions, and so as to take in the servants of municipal, charitable, and other public bodies and associations. Should it seem advisable to the Select Committee, the Government will not object to bring the servants of firms into the same category. There can be little doubt that it is a boon to the persons who fall under this Part to pay the tax by monthly deductions from their incomes. The Government can extend this boon to the servants of firms without material inconvenience, and are willing to do so if it be desired. It is not intended that persons should be exempt from the Income Tax whose incomes arise in British India, merely because their lives are spent chiefly or even entirely on boardship.

Upon Companies, as upon servants, the tax is to be levied at an exact percentage. The precise profits made in India by most of such Companies can be ascertained and returned without much trouble. In order to reduce this trouble to a minimum, it is proposed to assess the profits of Companies as ascertained by their latest completed accounts, instead of requiring the preparation of special accounts for the purposes of the Bill.

The principle upon which it is proposed to tax Shipping Companies is to reckon half the profits of a voyage between India and a foreign port as accruing in India. It is believed that there will be no difficulty in ascertaining such profits upon this principle.

Insurance Companies are, as the Bill stands, exempted from this Part, truth to say, because owing to the effect upon all such Companies of the mutual principle and to the difficulty of ascertaining what share of any profits made by the Agencies of Foreign Companies can be credited to British India, a plan of satisfactorily taxing them has not yet been ascertained. Should it be found possible to do so, this feature in the Bill may be amended in the Select Committee; otherwise Insurance Companies, as such, will escape taxation; the shareholders, however, paying upon their profits under Part IV of the Bill. The profits of shareholders in Companies taxed under Part III will not be taxed under Part IV.

The schedule, in accordance with which it is proposed that the duties be levied under this Part, is intended to preserve the principle of rough assessment without returns, while avoiding the sacrifice of revenue involved in the very broad classification heretofore adopted.

Under Rs. 1,000, the Assessors, under the Act, will have to estimate incomes within a margin of Rs. 250. From Rs. 1,000 and under Rs. 2,000 the margin proposed is Rs. 500; from Rs. 2,000, but under Rs. 10,000, the margin is to be Rs. 1,000; from Rs. 10,000, but under Rs. 1,00,000, the margin is to be Rs. 2,500; and from 1,00,000 upwards the margin for estimate is to be Rs. 10,000.

The tax levied is to be one per cent. upon the minimum income estimated, with an addition, to cover broken sums, of two-fifths of the difference between the minimum and the maximum. The exact mean is not taken, because it is presumed that more incomes will fall below the exact mean than above it.

Thus a person whose income is estimated to be between Rs. 500 and 750 will pay one per cent. upon Rs. 600.

A person whose income is estimated to be between Rs. 6,000 and 7,000 will pay upon Rs. 6,400.

A person whose income is estimated to be between Rs. 15,000 and 17,500 will pay upon Rs. 16,000.

A person whose income is estimated to be between Rs. 1,10,000 and Rs. 1,20,000 will pay upon Rs. 1,14,000; and so on.

Although no provision is made in the Bill for the formal return of any information to the Collector in the first instance, it is the confident expectation of the Government that persons liable to the duty will assist the Collector by disclosing such facts as he may require to know to enable him to make his assessment, thereby avoiding the annoyance of the over-assessment, which is likely perhaps to result if information be withheld.

It is proposed that the procedure under Part IV should differ slightly from that adopted under the Acts of 1867 and 1868, being at once simpler and, it is hoped, more convenient to the taxpayers.

The lists and certificates of these Acts are abandoned, and a notice will be served on each person showing the duty to which he is assessed. Should he object to the assessment, he will be allowed to petition the Collector without the preliminary payment of the amount heretofore required. It is only when a person wishes to appeal from the final decision of the Collector to the Commissioner, that payment of the amount assessed will be insisted upon as a condition precedent.

A provision has been introduced to enable the Collector to enhance the assessment made on any objector, in case it be discovered in the course of the enquiries following upon his objection, that the original assessment was too low. This will tend to prevent unfounded objections.

A person not paying either at once or after the disposal of any objection that he may make, will be liable to be summoned before a Magistrate without further notice, and the Magistrate will, as heretofore, have no option but to fine him in double the amount assessed upon him.

Provision has been made to enable a Collector to supplement an assessment deficient by reason of his being in ignorance of any particular source of income or profits. To this extent, the *onus* of informing the Collector correctly at the time when the assessment is first made is thrown upon the taxpayer.

Penalties are provided by which the proper officers of Companies, &c., can be forced to deliver the returns required. Power is given to the Commissioner of the Division to remit the penalty in part or entirely.

The year of assessment under the Acts of 1867 and 1868 commenced on the 1st May. This is found inconvenient; the Income Tax year will therefore coincide with the ordinary Financial year, and commence on the 1st April.

Provision is made in the Bill for the deduction from duty payable under it of any tax paid for April 1869 under Act IX of 1868.

It is not proposed to allow any discount to persons paying at once a sum which they might have paid, if they preferred it, as a second instalment. There is no sufficient advantage to the Exchequer from such pre-payments to compensate for the trouble that the accounting for discount gives.

The form of Schedule B. has been amended, so as to make it absolutely clear that though the last complete year's income of a taxpayer is to be an important *primâ facie* guide to the Assessor, it is not to be an absolute standard. Either the assessor or the assessee may show cause why it should not be followed.

It is not intended to levy any duty upon the interest paid upon the Public Debt to persons not residing in British India, or upon annuities or allowances paid to persons so situate.

Such, my Lord, is the measure which I have to propose. In framing it I have made large use of the experience gained in working the valuable measures introduced in 1867 and 1868 by my Right Hon'ble friend Mr. Massey.

If the present Bill shall be found, as I have striven to make it, as little burdensome to the taxpayer as is consistent with the necessities of the Exchequer, this result will be largely owing to the antecedent labours of my Right Hon'ble friend and predecessor."

The Hon'ble MR. BULLEN said that, when the Bill for taxing trades and professions was under consideration last year, it was opposed by his friend Mr. Skinner, who preceded him in the Council, on two grounds—first, on the ground that it was unnecessary, because from the statement of revenue submitted to the Council, it would, in all probability, be found that there was in reality no deficit but rather a small surplus, or at all events an equilibrium. Secondly, on the ground that it was unjust to select particular trades and professions for taxation, whilst other classes were allowed to go free, and especially unjust if those trades and professions were selected whose incomes were precarious, whilst those whose incomes were derived from fixed property were allowed to escape. That those objections were well founded was shown in the first place by the figures which Sir Richard Temple read on last Saturday, regarding the expenditure and income of the year 1868-69, as far as they could be ascertained. If Hon'ble Members would refer to the accounts at page 53 of the pamphlet, they would find that the regular expenditure for 1868-69 amounted to £50,259,171, but that included

£1,822,090 for public works, which were originally treated as extraordinary, but which had now been transferred to ordinary expenditure. That sum must consequently be deducted, because the Government had no intention at that time of treating the expenditure on barracks and public works of that kind as ordinary expenditure. If that was admitted, it would leave £48,437,081 as the expenditure of the last year. The receipts had been £49,288,700, from which must be deducted the amount received under the head of assessed taxes, which would not have been received if the Certificate Tax Bill had not been passed. Deduct £520,000, the amount realised under the Certificate Act; and £48,768,700 would be the result as the amount of actual receipts, which showed a surplus of £331,621. Therefore, as far as Mr. Skinner's first objection went, it was satisfactorily proved by the result that the objection was well founded.

As to the second objection, it was sufficiently vindicated by the fact that the Hon'ble Sir Richard Temple now came and asked for the repeal of the Certificate Act and the introduction of another which would tax all classes equally.

It was not MR. BULLEN's intention to repeat the opposition of last year. He was free to confess, after having given careful consideration to the arguments adduced with regard to the separation of ordinary and extraordinary expenditure, that he coincided in the principle laid down. Taking such public works as barracks which were principally alluded to, he agreed that they could in no sense be considered as of a reproductive kind, and were therefore properly chargeable to the revenue of the current year. Of course that must be taken with some reservation, because if the Government proposed to disburse the ten millions, which the barracks were estimated to cost, in two instead of ten years, it would not be a fair charge on current revenue. But considering that it was to be spread over several years, he considered it was a charge which could fairly be placed in the current expenditure. If that was admitted, it followed that there must be taxation, unless the expenditure could be reduced here or in England. The Council had been told that economy here had been carried as far as possible consistently of course with the maintaining of the services in a proper state of efficiency. With regard to the expenditure in England, Sir Richard Temple had told the Council that the estimates received from the Secretary of State must be implicitly accepted. MR. BULLEN would revert later to that point. If therefore the expenditure could not be reduced, could the revenues be increased? Turning to the different heads of the budget, the only one in which he saw that an increase might possibly arise was opium. He thought it possible that the receipts on account of opium were a little under-estimated, because, although the provision for the year would be small

owing to short yield on account of the badness of the season, yet it was probable that the prices would rise in proportion to the reduced quantity, and the result would be that opium would show some increase on the amount estimated. If they looked to customs, there also there might possibly be some increase by the natural growth of trade; but against that must be set that the fixed valuations on which the duties were levied was to be reduced. A recommendation to that effect had been made to the Government, and he believed it was the intention of the Government to accede to it. There could not therefore be a great increase in the customs. Then, the article of salt had been suggested as one from which an increased revenue might be derived. It was a favourite argument with the Native community that a small increase to the Salt Tax would not be felt, and that it was preferable to direct taxation. He knew that any proposition to increase the salt tax would find little favour in the Council, nor was he prepared to recommend that course. The increase could only be fair to the people if a reduction was made on other dutiable articles which entered largely into Native consumption.

If then an increase of revenue from indirect taxation was impossible, there was no resource but to resort to direct taxation, and in that case MR. BULLEN preferred an income tax on profits, to the certificate tax which it repealed. He thought the unpopularity of the late income tax amongst the Natives arose in a great measure from the inquisitorial nature of the returns which they were required to make, and also from the great oppression of which the collection of that tax was made the engine. Of course it would be clearly the duty of the Government to endeavour as far as it could to prevent such oppression. Only yesterday he had read in a Native paper, whose statements on other subjects were accepted as correct or at least as deserving of investigation, that recently great oppression had been proved in the collection of the certificate duty in the Húgli district. Persons had been assessed who were really not liable owing to their incomes being smaller than the minimum sum taxable, and also persons had been classed as partners and made to pay the certificate tax when they were not partners at all. In any proved cases of that kind it would be the duty of the Government to punish the parties who had gone beyond the provisions of the law.

It was not MR. BULLEN's intention to follow Sir Richard Temple into any discussion on the general clauses of the Bill; that could better be done in Committee: but there was one remark he had intended to make, and in which he had to some extent been answered by anticipation. The Bill did not make provision for the levy of the income tax on Government securities the interest of which was paid in England. There did not seem any good reason

why a person residing in England, the interest on whose securities was drawn by his agent in India, should pay the income tax, and another person residing in England getting paid his interest by drafts in India should be exempt. But that was a question which might properly be considered in Committee.

He would now revert to the question of Home charges. There was a peculiarity in the expression made use of in the budget statement in referring to this question. Sir Richard Temple said that the accounts rendered by the Secretary of State must be implicitly accepted. MR. BULLEN thought there was something in this expression of Sir Richard Temple's which implied that he would like to discuss this question if he were at liberty to do so. MR. BULLEN did not find himself under the same restraint. Formerly a statement of the Home charges used to be appended to the budget statement, and the Council had the opportunity of seeing what they consisted of: that for some reasons had not been done for the last two or three years. Whether because it was understood that this Council had no control over those charges, he did not know; but he thought it would be some satisfaction to know in what way the large sum of seven millions was expended in England. No one, he believed, doubted that every penny of the money was honestly disbursed for the service of India; but at any rate the least the Council could ask was that the tax-payers should have an account rendered to them of the way in which the money was expended. There was another question connected with this: it was the question of the Home balances. He found that those balances amounted generally to four or five millions. That appeared to be an unduly large sum, and it was not clear for what it was required. He had very often seen statements in the city article of the *Times* that the Secretary of State for India had lent half a million or a million on the Stock Exchange. No doubt the interest of that loan was credited to the Government of India; but lending money on the Stock Exchange at about one per cent., and borrowing at five per cent., was an operation in which one did not see the profits. At the very time that the Government here was under the necessity of borrowing large sums from the presidency banks at heavy rates of interest, which loans to some extent disturbed commercial operations, as far as they knew there was a large balance lying idle in the hands of the Secretary of State.

There was another matter on which he would ask for information,—it was with reference to the paper currency. Sir Richard Temple had made a satisfactory statement on that subject. He stated that the Government had now invested, as security against issue, four millions sterling. MR. BULLEN assumed that the interest on those four crores appeared somewhere in these accounts. It did not, however, appear under what head it would be found. The Hon'ble Mem-

ber spoke as if those four crores had been cancelled. MR. BULLEN apprehended that that was not exactly the way in which those securities were dealt with, for it might at some time become necessary for the Government to realise those securities, and if once cancelled it did not appear what authority the Government would have to re-issue them. He would suggest that it would be well if the paper currency account should appear under some head in the budget account; that the expenditure should appear on one side of the account, and the interest received in other departments on the other side.

The measure which the Government had taken to increase the weight of letters which might be carried by a single postage rate was a very great boon to the public. He might say the same of the uniform telegraph rate; he did not think the financial loss eventually would be important. He thought, on the contrary, that there would probably be an increase of revenue from these sources.

Then, with regard to the loans which Sir Richard Temple had stated that it would be necessary to raise. He need scarcely say that it was extremely important for the mercantile community to know when those loans would be raised, and in what form. He understood that half a million would be raised immediately on debentures, and another half a million in the course of the year. Two millions he understood were to be raised in England. There was a further two millions, as to which the Council did not know where or when it would be raised. He trusted that as soon as Sir Richard Temple was in a position to do so, he would make known to the public the intentions of the Government, because it was of the greatest importance that a loan of two millions should not be hanging over the market. MR. BULLEN thought the whole loan could be raised more easily in England, and at a lower rate of interest than in India, and being raised on reproductive public works it would be readily taken up.

In conclusion he wished to assure the Government that, as far as the European non-official community was concerned, he believed there was no indisposition to submit to such taxation as was necessary for the good government of the country. Strict watchfulness over expenditure they did expect, but undue economy might prove in the end to be very wasteful. With the increased cost of living in this country, and the constant demand for improved civil administration which the progress of education brought in its train, no one could expect that the cost of the civil government of the country would diminish; ather they must expect year by year to find it increase. Nor could the military expenditure remain stationary so long as the European force was maintained at its present strength; and he for one was not in favour of that force being reduced. No one begrudged to the European soldier the extra pay,

nor to his wife the extra subsistence allowance; nor to the sepoy his good conduct pay. These additional charges were not to be met by a little paring here and a little retrenchment there, ending as it probably would in reducing establishments below the point of efficiency, from which inevitably there would be a costly reaction. Rather it should be the aim of Government by fostering industry and commerce, and by improving communications, to increase those sources of revenue which were elastic, so as to meet the increased expenditure. The happiness of the people would thus be promoted and the administration of India, already so creditable to England in the eyes of all impartial observers, would become still more honorable to the nation to whose government, by the Providence of God, these millions had been entrusted.

The Hon'ble MR. SHAW STEWART said that he had very few remarks to make on this Bill. He trusted the Hon'ble Sir Richard Temple would accept his sincere congratulations on the success with which he had vindicated and re-established the policy of the Income Tax of 1860. He had always thought that it was an unfortunate day for India when those counsels prevailed which resulted in the reversal of that policy, and in the abrogation of the entire tax, including both the three per cent. tax, to the repeal of which Government was pledged, and the one per cent. tax, regarding which there had been no such pledge given, and which it was originally intended to retain permanently. It was also satisfactory to observe that the Hon'ble gentleman expected to realize upwards of £900,000 by this tax. When it was remembered that the four per cent. income tax of 1860, in the only year it was efficiently worked, yielded but two millions, it was most satisfactory to think that there was every prospect of obtaining now a result proportionately double.

Reserving his remarks on minor details, he (MR. SHAW STEWART) would refer to two points in the Bill before them. The Hon'ble Mover stated his expectation that the public would afford information as to the extent of their private incomes, and that the Collectors would thus be able to assess the tax without calling for returns: he feared very much that this was expecting too much from the public and from the Collectors, and he did not see how to attain any degree of exactness in the assessments, unless the Collectors were authorized to call for returns of income.

The other point in the Bill to which he desired to refer was the rate of assessment; he doubted very much if that would be sufficient. With the proposed rate, the Hon'ble gentleman expected a sum of £900,000, and so to obtain a slight surplus, or at all events an equilibrium; but there was one branch of the estimated revenue which he thought was taken for too much: he referred to Stamps. The Hon'ble gentleman in his budget speech remarked as follows:

"As the Council knows, there is a revision going on of the schedules of the stamp-duties; but no provision has been made for the fiscal effect of any changes, as they have not yet been finally determined."

But on turning to the tabular statements, MR. SHAW STEWART found that an increase was expected from £2,340,000 in the current year, to £2,397,000 in the year about to commence, or upwards of £57,000. Remembering that these duties rose at a jump in 1867 by upwards of £700,000, he thought that there was room to fear that no allowance had been made for revision on the side of decrease, but that it was intended to strain these duties to the utmost. Ever since this law was proposed, he had steadily opposed the enormous increase of stamp-duty on civil plaints, and the institution-fee on criminal proceedings. The former had involved an increase in the stamp-duty on civil suits, which varied, he believed, from four-fold to forty-fold; by the latter it had been for the first time enacted as law throughout India, and in opposition to the opinion of the Governments of Madras and Bombay, that no one of the population of this country could bring a criminal charge without paying a fee equal to a week's earnings of an ordinary labourer. By steady perseverance in his opposition, he elicited at last from His Excellency's predecessor, Sir John Lawrence, an acknowledgment that more had been done than ought to have been done; that in some respects the new stamp-duties were excessive and unreasonable, and that the law did press severely on the poorer classes, and His Excellency admitted the reasonableness of his (MR. SHAW STEWART'S) wish to have the question reconsidered. The question of revision was, he knew, in the hands of a member of this Council of whose ability and judgment he had the highest opinion, and he was confident that in his hands no delay would occur in dealing with a mode of taxation which had been condemned by the Local Governments. If these stamp-duties were revised so as to afford the relief that was expected, there would be a considerable falling off in the revenue from this source, which could only be met by an increase in the rate of the income tax.

With the general policy enunciated in his Hon'ble friend's budget speech he almost entirely concurred; there was only one point which caused him regret. It would be remembered that two years ago the Right Hon'ble Mr. Massey referred to a scheme for giving greater financial independence to the Local Governments of Bombay and Madras. He described forcibly the unsatisfactory nature of the control exercised by the central Government over local charges, and expressed a hope that he would be able to bring that arrangement to maturity before the close of the year 1867-68. Last year MR. SHAW STEWART reminded the Right Hon'ble gentleman of the statement, and he said that the plan was still under the consideration of Government. This year his

Hon'ble friend could only repeat that the subject was still under consideration. MR. SHAW STEWART ventured to express a hope that, when the subject had received mature consideration, something would be done. He had had a little to do with the administration of one of these Local Governments, and he could confidently assert that if they were placed in a position of greater financial independence and responsibility, they would be endued with far greater life and usefulness.

The Hon'ble MAHÁRÁJÁ SIR DIG-BIJAY SING, speaking in Hindústání, said that his Hon'ble colleague Sir Richard Temple had, in his report on the Budget for the coming year, so ably and distinctly proved a deficit of £3,50,000 in the proposed charges against the receipts of the coming year, that the necessity of imposing a fresh tax appeared unavoidable.

He would, under such circumstances, propose that permission be granted (under certain conditions) to re-open the Salt works in the North-Western Provinces and Oudh, in the places where salt was formerly manufactured, and had only lately been stopped by Government, as he believed this would in some measure add to the receipts of the coming year, and at the same time fill the hearts of the majority of poor people with gratitude by placing this most indispensable article within their reach at a much reduced price. He would also advocate a closer supervision of the Public Works' expenditure, as he was certain that, by so doing, a very large saving might be effected without in any way impairing the efficiency of the Department or the number or quality of the works undertaken by it. Besides the above, if even the most imperceptible reductions were to be made in the miscellaneous and other expenses, each item, though most insignificant in itself separately, would, when added together, amount to something near the present deficit.

The Hon'ble MR. COWIE said that he believed he was right in assuming that the financial statement of the Hon'ble Sir Richard Temple had the full sanction of the Executive Government as well as that of the Secretary of State. In making any remarks upon it he could hardly hope to effect any immediate change in their views. He could only ventilate his own opinion as an independent Member of this Council. He conceived that the Hon'ble Member, in spite of his expressed anxiety to slay the giant, deficit, had had to create that giant first and to despatch him afterwards. He had done this by placing the heavy amount of a million and a half for the partial cost of new barracks among items of ordinary expenditure to be met out of current revenue.

Now he (MR. COWIE) could not subscribe to the reasons for this which were insisted upon in the Budget speech, except perhaps to the last one, that it was the order of the Secretary of State.

But then that ought to have been placed first, for it over-rode all the others. This new barrack accommodation, which would do so much for the soldier and eventually for the country and the revenue, ought, if faithfully constructed, to be good for the next half century, and why the cost was to come out of the current revenue of two or three years, or, in other words, out of the pockets of the tax-payers of that limited period, he confessed he could not comprehend. He might here, with reference to what fell from his Hon'ble friend Mr. Bullen, record his opinion that barracks of the nature proposed would prove in one sense reproductive works. His Excellency the Commander-in-Chief could inform us how many hundreds of British soldiers were annually brought out to this country and at what heavy cost to its revenues. Improve the condition, moral, social and sanitary, of those soldiers, and you would in the course of years find a material reduction in the numbers required and in their consequent cost to the State. He (MR. COWIE) was very far from desiring to saddle posterity with this outlay. But he maintained it was only fair and reasonable that it should be extended over a moderate series of years. For instance, if ten millions were required for such an object, issue debentures payable annually within fifteen years. The budget provision for these annual instalments, with their interest, would surely be a more legitimate task for the Finance Minister of the year than the setting down, as on the present occasion, an arbitrary sum productive of a deficit, which again had to be made up by the imposition of new taxes.

If the Hon'ble Member, in his present estimate for 1869-70, would transfer one million of the cost of barracks to extraordinary charges, and provide for it by the issue of debentures at two and three years, he would find himself in possession of an estimated surplus which would enable him to reduce or remove the objectionable export duty on grain, and such portions of the 7½ per cent. duties as had lately been shewn to press heavily on commerce. The Hon'ble Member, in explaining why the tax-payer of the present day should be subject to this proposed heavy outlay, warned us that other demands of a like nature would constantly be cropping up; but surely this prophecy might fairly be taken in connexion with the extraordinary elasticity of revenue which was at the same time commented upon, and which would no doubt be progressive. He might now say that he cordially approved of the supersession of the license tax by the new income tax, and would even have welcomed a somewhat higher per centage, if it had been made contemporaneous with the desired remission in customs' duties. In regard to the details of the Bill he would only say that he hoped the Hon'ble Member would place Mr. Bullen and himself on the Select Committee, where they could give their consideration to it. In conclusion he wished to ask the Hon'ble Sir Richard Temple whether, in the

present greatly improved state of intercourse by rail, wire and steam, it was requisite to hold such large cash balances as twelve millions. Where such facilities of communication existed, that sum would appear to bear a very large proportion to an annual expenditure of fifty-two millions. His Hon'ble friend, Mr. Bullen, had made a similar enquiry in regard to balances in London, so he (MR. COWIE) confined himself to those of India. Possibly the occasional use of the exchequer bill system might obviate the necessity of keeping such heavy unemployed balances.

The Hon'ble MR. COCKERELL said that as the policy of the Bill which was now before the Council was one in which he entirely concurred, inasmuch as it aimed at the removal of those defects of the certificate tax which he, in common with a late Member of this Council, the Hon'ble Mr. Skinner, had so especially deprecated, in the debate which preceded the adoption of that measure last year; as, moreover, this proposed taxation had on the present occasion elicited no opposition whatever, and consequently needed no defence, it would have been unnecessary for him (MR. COCKERELL) to take up the time of the Council with any remarks in this debate, but for the fact of the Hon'ble Mr. Shaw Stewart having, with his customary pertinacity, availed himself of the opportunity afforded him by this debate of ventilating his opinion as to the impolicy of the increased stamp-duty on judicial proceedings and especially the one rupee stamp on criminal petitions, which resulted from the enactment of Act XXVI of 1867. As the investigation of the results of that legislation which Mr. Shaw Stewart condemned, had been specially entrusted to him (MR. COCKERELL), it seemed right that he should not allow his Hon'ble friend's remarks on this subject to pass without stating the facts of the case. He (MR. COCKERELL) could assure the Council that the Government of India had been in no way unmindful of the pledge which it gave that the operation of the Act would be carefully watched, and if the proved effects of its operation should be found to be as prejudicial to the due administration of justice as the Hon'ble Member (Mr. Shaw Stewart) assumed, that some substantial relief would be afforded.

In pursuance of this undertaking the Government of India had, at the close of the first year's operation of the new Act, directed the submission of certain statistical returns and reports which were calculated to afford a fair test of its actual effect on general litigation. These returns and reports had now been received from almost all parts of the empire, and he (MR. COCKERELL) had been employed for some time in collating the facts established by them regarding the working of the new and enhanced rates of stamp fees levied on judicial proceedings.

The Hon'ble Mr. Shaw Stewart, from what source of information he (MR. COCKERELL) could not conceive, had stated to the Council that the reports of all local officers went to show that the effect of the stamp fee levied on criminal petitions was universally condemned. As all the reports on the working of the Act had been referred to him (MR. COCKERELL) for examination and analysis, the Council would probably deem him better qualified to speak authoritatively on such a subject than his Hon'ble friend.

The Governments of Madras and Bombay had expressed their condemnation of the policy of imposing any stamp-fee on criminal proceedings, but this opinion was certainly not universally, even if it could be said to be generally, shared by the local officers subordinate to those Governments; nor could it be said to be strongly supported by the statistical returns of the working of the Act on this branch of judicial proceedings which had been submitted by those officers. On the whole, opinion might be said to be very much divided on this point, and the statistical returns were far from conclusive as to the impolicy of levying stamp-fees on criminal petitions.

So also as regarded the increased rates in civil and revenue suits, the information as yet obtained was insufficient to lead to any sound conclusion as to the real effects of those rates. There had no doubt been a very considerable reduction, amounting to something like twenty per cent. of the litigation of the previous year, during the first year's operation of Act XXVI of 1867; but those officers whose expressed opinions evinced the most thought on this subject, hesitated to accept this reduction as a fair and certain test of the oppressive character of the stamp-fees imposed by that enactment.

It was urged, and the argument commended itself to the reason, that in the first year's operation of so greatly enhanced rates, a considerable reduction in the number of suits instituted was to be expected as the necessary result of the declaration of the policy of the Government, made at the time of the enactment of this measure, to the effect that it was to be considered as tentative, liable to be modified to such extent as the experience gained of its operation might suggest.

In such case, where the institution of suits could be delayed, they would certainly be kept back in the expectation of some modification of the rates of institution-fee; hence deductions from the returns of the first year's operation of the new law were inconclusive.

The working of the Act was therefore still under observation and consideration, and the Government would, he felt sure, take action in the matter, if

necessary, when there was sufficient information before it to enable it to judge by practical results whether the rates of fees levied on the institution of civil suits had been too greatly enhanced, and whether it was expedient that the imposition of a one rupee stamp on criminal petitions should or should not be retained.

His Honour the Lieutenant Governor said the Hon'ble Mr. Shaw Stewart had anticipated him in the only remarks which he had intended to make when he doubted its being possible to work the Bill before the Council without having returns of income. His Honour shared that doubt very strongly; indeed he had read section 16 two or three times before he could believe that the Collector was himself to ascertain, without any assistance at all, the incomes of persons, from whatever sources derived, resident within his own jurisdiction.

The principle of that clause might possibly work in a tolerably fair way when it applied only to professions and occupations; but when we came to apply that principle to every kind of income, it seemed to His Honour simply impossible that the Collector could do any thing but make the very widest guess at any man's income. His Honour having now heard what the Hon'ble Sir Richard Temple had said, that his expectation was that the tax-payers would themselves be good enough to inform the Collector in every case what their incomes were, His Honour entirely agreed with Mr. Shaw Stewart in thinking that the Hon'ble Member was expecting too much, and His Honour could not but fear that the attempt would throw something like ridicule on the measure. His Honour therefore expressed the strongest hope that the Select Committee would not, without very careful consideration, keep the Bill in its present shape.

If the Hon'ble Mr. Shaw Stewart had anticipated His Honour on one point, he made a remark which led His Honour to make an observation on another point. His Honour congratulated Sir Richard Temple in having restored or reverted to the policy of the Right Hon'ble Mr. Wilson in 1860, and His Honour must say that whatever the merits of the present policy might be, there was no sort of analogy whatever between that and the policy of 1860. His Honour did not propose to detain the Council by attempting to prove that statement; he would only refer any one who doubted it to the speech made by Mr. Wilson in 1860, and his statement of the circumstances under which the income tax was proposed. Those circumstances, and the circumstances under which a general income-tax was now proposed, were as different as it was possible to conceive.

His Excellency the Commander-in-Chief said he had intended to have given a silent vote on this occasion in support of the proposals of his Hon'ble colleague Sir Richard Temple. Indeed, His Excellency had revolved very carefully in his mind the propriety of the course which he was now about to take; he would assure the Council that he proposed to make no opposition to the measure before it, but, on the contrary, as a Member of His Lordship's Government, and as one who had been admitted to all the previous discussions and deliberations on the measures before the Council, His Excellency was not only prepared to vote in favour of the measure, but also to say something in favour of it. But there were points in Sir Richard Temple's statement which His Excellency confessed gave him, as a Member of Sir John Lawrence's Government, and as a very intimate friend and hearty colleague of the Right Hon'ble Mr. Massey, considerable pain. If we looked at the pamphlet which contained Sir Richard Temple's budget statement, in page 22 we found that his Hon'ble friend had adopted the method of bringing on the carpet the financial liabilities of the preceding years. We were there told of the deficits of the previous three years; we were told of the loans which were made in order to meet those deficits; and we were finally afforded the reasons, according to Sir Richard Temple's apprehension, of the loans. In regard to the deficits and in regard to the loans there was no question; but His Excellency desired immediately to join issue with Sir Richard Temple on the reasons which led to the loans. It was said that on account of certain Civil Public Works of a remunerative character, three millions of money had been obtained by loans, and Sir Richard Temple then proceeded to say that three and a half millions had also been provided by loan to meet the charge on account of Barracks. Now His Excellency must trouble the Council with a short detail of what took place some time back. A few months ago, within closed doors, this Council, under the presidency of His Excellency's predecessor, had a very long and active discussion on the matter, which had received its solution by the decision of the Governor General in Council with regard to the measures introduced by Sir Richard Temple. One of the points which was then discussed was the amount of borrowed money which had been spent on these very Barracks, and on which it was now declared that 3½ millions had been expended, the said 3½ millions having been raised by loan. It was established in that discussion that only £364,000 had been so raised on that account; that is to say that the large gross charge of nearly four and a half millions had been defrayed out of the ordinary revenue excepting the sum of £364,000. That point was established by His Excellency. In Sir Richard Temple's reply to His Excellency's Minute comprising numerous points of controversy which had arisen between His Excellency and Sir Richard Temple, that point was not controverted. Therefore His

EXCELLENCY had a right to say by assumption—he would rather say that his assertion, based on the figures furnished by authoritative departments, that only £361,000 of borrowed money had been expended on account of the Barracks, was correct; for it was not controverted by Sir Richard Temple in the course of that discussion. HIS EXCELLENCY was therefore at a loss to understand what was the meaning of the statement which he found in the pamphlet, that 3½ millions of borrowed money had been expended on account of those Barracks. Now that statement did really cast a great imputation on the reputation of the Right Hon'ble Mr. Massey, and it also cast a great imputation on the Government of which Mr. Massey was a member. HIS EXCELLENCY would proceed to show how that arose. The Right Hon'ble Mr. Massey was at great pains, in the statements which he delivered in 1867 and 1868, to explain how it was that deficits had occurred, and that it might be necessary for the Governor General in Council to have recourse to the market instead of depending on the ordinary revenues of the country. HIS EXCELLENCY found in the first place, in the statement of 1867, that it was originally intended to build steamers for the transport service, involving an expenditure of about one million, out of borrowed money. It appeared that in England there must have been much controversy on this point, and finally it was determined not to borrow on this account, but to take the money out of the cash balances. Consequently, we had the Right Hon'ble Mr. Massey declaring that this money was provided from the cash balances, and instead of having to meet a very small charge for interest and the eventual re-payment of the loan, he had to encounter an immediate charge of half a million on that account: that disposed of 1½ millions out of the 3½. If we went on to the next budget statement, we found the following; this it would be recollected was delivered this time last year (1868). The Right Hon'ble gentleman was describing the actual results of the year 1866-67. He said:—

"Our estimated expenditure was £44,307,000; our actual was £44,530,000. Our estimated deficit was £2,400,000; our actual deficit turned out to be £2,517,000. The difference between our estimated deficit and the actual result was, in round numbers, £120,000. I stated to the Council last year that the very large deficit which I had to meet was not attributable to any falling off in the revenue, but mainly to accidental causes. It was, in the first place, owing to an over-estimate of opium, but not a very considerable over-estimate. The deficit under this head was still further increased by the accident that we had calculated upon bringing to the market in Calcutta a greater number of chests than we were by our engagements enabled to do. In fact we were obliged to keep back 5,320 chests of opium, which would have realized £691,600. The deficit was also swollen by other special and temporary causes. We were disappointed in our expectation of repayment of £460,000, advanced to Bombay against the proceeds of the Land Sales. There were losses of nearly £300,000, under Customs and Salt, owing to the depression of trade; and the Home charges were increased by £480,000 on account of the new transport ships and stores for India."

Thus it appeared that, instead of debiting this deficit to the charge on account of Barracks, Mr. Massey debited it to every other conceivable item of expenditure. The importance of this would be shown in His Excellency's further remarks. But it must also be observed that, whilst Sir Richard Temple threw all the burthen of the loans on the Barracks, he omitted to consider another cause of this deficit which led to those loans. His Excellency should rather say of this nominal deficit; because, under the instructions of the Secretary of State, we were desired to take under the head of Ordinary Expenditure, not only these Barracks, but also vast civil works which on the average exceeded £400,000 per annum in their cost. Therefore, in addition to the particular cause to which His Excellency had just referred, we had also to add the cost of such civil works, but which were not included in the present statement. His Excellency thought that he had now shown that Sir Richard Temple, when he committed himself to that statement, committed himself to an oversight, and it was important that the oversight should be freely explained, as His Excellency would venture to do, because the reputation of the Right Hon'ble Mr. Massey was seriously concerned, seeing that Sir Richard Temple ascribed the causes of the loans to wholly other causes than those accepted by us under the Government of His Lordship's predecessor.

It was necessary perhaps that His Excellency should elucidate this point still farther. In 1865-66 this barrack reform first came to be carried into practical effect after a vast deal of deliberation. The Right Hon'ble Mr. Massey, in his statement in 1866, was unwilling to load the estimates with a loan on that account, and he was supported in his caution by the members of Sir John Lawrence's Government; but in the next year, not only Mr. Massey, but, His Excellency believed, every member of the Administration of that year, was strongly impressed by the notion that the ordinary revenues of the country were greatly too much devoted to this item of extraordinary military expenditure, and that in consequence civil designs and works of great importance to the community at large would be indefinitely postponed. Therefore it was that the resolution was adopted in 1866, to follow that course which had been already shadowed out by Lord Halifax as Secretary of State in 1865, when he told us "Build your Barracks as well as you can out of your income, but having done so, you may borrow the remainder for it." What was the course of the Right Hon'ble Mr. Massey? He did not commit himself, as was done in England in the analogous case of the fortifications, to an immense loan; he did not commit himself to a declaration that the whole of the works were to be constructed out of borrowed money; he did not hastily contract loans, but he declared that he would adopt the plan of Lord Halifax,

and having built the Barracks as far as he could out of the ordinary revenues of the year, would borrow the difference to give him the means for their completion. That was the policy agreed to in Sir John Lawrence's Council in 1866, he believed without a single dissentient voice. There were present to-day those who could correct His Excellency if he was wrong, but he believed Mr. Massey was supported in that proposition by the unanimous voice of the Council of that day. Lord Halifax was succeeded by Lord Cranbourne, who fully adopted the principle which was carried out by the Government of India, and he gave his sanction to the proposition of Mr. Massey. Accordingly we saw that in 1867 the Right Hon'ble Mr. Massey, or rather the Secretary of State on his account, borrowed a million of money on account of these Barracks: but such was the elasticity of the revenue in 1867; such was the difference between the actual returns as compared with the budget estimate, that Mr. Massey told us this time last year that out of the borrowed million he had only spent £200,000; the remainder was in our cash balances, and could be spent on remunerative works, or would go to increase our income for the next year. We therefore arrived at this conclusion, that not only were the loans not to be attributed, as Sir Richard Temple had solely attributed them, to the sums expended in the building of these Barracks, but also to this conclusion that the Right Hon'ble Mr. Massey took the greatest possible precautions to limit loan obligations on this account. That was a very important fact. His Excellency invited the attention of the Council to the epithet used in the 41st page of the pamphlet, in which the policy pursued by the Government of India for three years—a policy which had received the sanction of three successive Secretaries of State, a policy which was finally reversed without argument, a policy which the Government never asked to be reversed—was stigmatized as intolerable; if we turned to the 41st page we saw that that policy had been thus stigmatized. His Excellency thought that, notwithstanding the compliment paid to the Right Hon'ble Mr. Massey by his Hon'ble friend, notwithstanding that a change of view had actuated the policy of the present day, to use such a term with reference to a policy which had been very deliberately adopted and approved was not respectful to the Government of that time, and certainly not of a character which would be grateful to Sir Richard Temple's predecessor.

His Excellency had already said that it was not only his wish to give a vote in support of the measure before the Council, but that he thought there was something to be said in favour of the policy now pursued. It was no secret in this Council that His Excellency had been a humble follower of the doctrines of the Right Hon'ble Mr. Massey and his predecessor Sir Charles Trevelyan with regard to direct taxation, but as times and circumstances

changed, so it might be necessary with regard to expediency to alter our views. It had been determined to spread the building of these Barracks over a period which His Excellency thought would be nearer ten, or perhaps ten or twelve years, than the term of five years originally determined on. That was not a mere matter of finance, but was also a matter of engineering necessity and construction, and on a final review of all the circumstances of the case by the present Secretary of State, it had been determined that, at all events during the current year, such a sum only should be set aside for extraordinary expenditure on account of these Barracks as, if the example were followed in future, would defer the final completion of those Barracks to (say) six or seven years from this date, instead of the original five years, besides the four or five years already expired. That being the case, the great argument against including this expenditure in ordinary revenue had to a certain extent been cut away; that is to say, with the finances in a healthy condition, the annual expenditure for Barracks had been so restricted that Sir Richard Temple could fairly declare that "as I have met you half way, you must consider this and allow me to take the remainder from revenue." But there was another point. It was clearly laid down in the despatch to the Secretary of State six or seven months ago, to which he had already referred, that if it were necessary to have recourse to an extension of the certificate tax, it might be augmented on the largest possible considerations, *viz.*, that we were about to commence a regular system of reproductive public works by becoming a great borrowing Government (that was Mr. Massey's expression), and that consequently it was necessary to fortify the credit of the country by taking measures that no works were borrowed for which might not fairly be expected to give returns. That brought His Excellency to the Hon'ble Mr. Cowie's view, and much might be said in its favour. It was quite true that the better you made the barracks, the more you looked after your men, the fewer the casualties would be, and undoubtedly the army charges would be lessened. But His Excellency was sure that any change of that sort must be one of the most gradual kind, and it was hardly one which a financier could take into calculation. There was another point, one of engineering and construction, which to a certain extent did strengthen Mr. Cowie's argument, that so long as troops were living in temporary barracks constructed only to last a small number of years, it did happen that a large amount was expended in the repairs of those barracks. His Excellency found, from the returns of Mr. Wilson, that in 1856-57 the ordinary charge for public works did not exceed £350,000. Now, however, we discovered that the ordinary charge for ordinary military public works, as distinguished from those great works of construction, amounted to about £700,000 a year. That was an alarming fact, because those ordinary works did not go to increase your fixed capital in the

shape of great permanent buildings, but they were mainly directed to keep in a fairly habitable state the buildings in which your troops were temporarily lodged. Therefore a very large proportion of that charge, which was principally devoted to repairs, would subside altogether, and although that would not be sufficient to cover the interest of such immense sums as would be required for the completion of the Barrack reform, it would act as a considerable set-off. His Excellency thought that, in order to make out a good case for the policy pursued by the Government (the point was noticed by His Honour the Lieutenant Governor), a sufficient distinction was not drawn by Sir Richard Temple between the state of things at the present day, and that to which Mr. Wilson alluded, and to which Mr. Laing in his subsequent statements drew marked attention for two years. If we looked at the deficits to which Mr. Wilson and Mr. Laing repeatedly invited notice, we found that they were deficits caused by the effects of the war that had just come to an end. Such was the period at which the experiment of the income tax was launched by Mr. Wilson and Mr. Laing, the latter of whom fully acknowledged the exertions of Major General Balfour and his Commission in reducing the military expenditure. Sir Charles Trevelyan also called marked attention to the fact of the vast expenditure still going on, and which was not finally put an end to till he had left the country. Well, what were the facts of the deficit now? Was it right to call it a deficit at all? or was it not rather right to say that, whatever deficit there was, was a supposed one, or rather that it was the result of an expenditure on ultimately remunerative account which was already to a great extent met by positive surplus. What then did the deficit in general consist of? It consisted in the first place of remunerative works. Sir Richard Temple had told us that these remunerative works amounted to three millions during three years. His Excellency had also shown that there were other works which, though not remunerative, were paid out of revenue and not out of loan. But in addition we had seen that half a million had been lent to the Calcutta Municipality at a reasonable rate of interest, and the terms and conditions of which were such as to extinguish the debt in a certain number of years.

There was another point to be considered. This extraordinary expenditure on account of the Barracks it had been determined as a matter of principle should be included under the head of Ordinary Expenditure, so that it might be defrayed out of the yearly revenue. But whilst that had been done, the Government of India did not depart from the proposition on which their original policy was founded, and they were careful in the despatch to the Secretary of State, which went some months ago, to show that although it was right, according to their view and the Secretary of State's bidding, to include this expenditure

under the head of Ordinary, still they saved their position by saying that the works themselves were extraordinary, that whilst the works still preserved that character of Extraordinary, they were built out of ordinary revenue. It was impossible to put any other construction on the words of the Government of India or the directions given successively by three Secretaries of State.

But there was another point yet. It would be found by the Returns appended to Mr. Laing's statement that he took a reasonable view of the guaranteed interest on Railways. He was careful to distinguish between deficits which did include that guarantee, and deficits which did not include that charge. He distinctly stated (and it was a proposition which had not been controverted) that properly such guaranteed interest was a charge on capital. We knew that, on nearly all the great Railways in Europe and the United States, when large capitals were embarked by private Companies for the construction of Railways or other remunerative works, it was the ordinary custom to raise a sufficiency of capital for the whole, so that the interest on capital should be paid from capital till the work became remunerative, that was to say until it was in operation. The Government of India being anxious to obtain the great sums wanted when the schemes of Lord Dalhousie were first submitted to the English market, adopted a policy which did not commend itself to private capitalists, and undertook to pay the guaranteed interest. What was the inference? It was that, far from being deficit proper, this large sum, accruing from year to year on account of guaranteed interest paid to Railway Companies, was in truth a sinking fund for the benefit of posterity. According to the plan of Lord Dalhousie, and fathered by every successive Financier, it was, in fact, a sinking fund for the use of those coming after us.

His Excellency did not wish to lay too much stress on this point, or to make any prediction as to when the returns of the Railways would be such as to commence the realization of the policy referred to, but it was certainly right to bear carefully in mind how the gross total of our expenditure came to be made up, especially with regard to the considerations to which he had now ventured to invite attention.

His Excellency did not wish to detain the Council any longer. He thought it right that a proper distinction should be drawn, and when we embarked on a great policy, His Excellency thought we ought to take measures befitting that policy; but at the same time we should draw proper distinctions, and not allow ourselves to run away with the idea that there was a deficit such as that dealt with by Mr. Wilson, when in point of fact we had to deal with a

time of financial prosperity which had never been equalled in India, and not even in any country in Europe, and at the present time was superior to that of our own country, England herself.

The Hon'ble MR. TAYLOR said that, before the debate went further, he wished to correct a statement of figures made by His Excellency the Commander-in-Chief, which, if unexplained, might lead to misapprehension. His Excellency said that the Hon'ble Mr. Cowie's remark as to the Barrack construction being in a sense remunerative was so far true that, since 1857-58, there had been a great increase in the charge for maintenance or repairs, and that in the former period the charge had not exceeded £3,00,000, whereas now the ordinary charge was £7,00,000. The figures quoted by His Excellency referred to repairs only. Now, what he (MR. TAYLOR) wished to explain was simply, that what was called *ordinary* included all new work not being parts of the great scheme for new Barracks. In the present Budget the sum for repairs was about £3,00,000, which was just about the sum quoted by His Excellency as that in 1857-58. The rest of the £7,00,000 was for minor new works.

The Hon'ble Major General SIR H. M. DURAND said that, after the communication of the decision of the Secretary of State, he felt precluded from entering into any discussion on the merits of the reversal of the financial policy which previous Secretaries of State had allowed in case of necessity, with respect to the extraordinary expenditure on Barrack-accommodation for our European soldiers. Accepting the decision of the Secretary of State as settling the question, he would avoid any analysis of this matter on its merits. Viewed in connection with the measures of the Right Hon'ble Mr. Massey, our late Member for Finance, the observations of His Excellency the Commander-in-Chief on the present budget-statement and in defence of Mr. Massey's policy, rendered it unnecessary on his part to review what had passed with reference to this more restricted ground. He would therefore confine his remarks to subsidiary considerations, and would not take up the time of the Council with any observations on either of the foregoing subjects.

That which he would first touch upon was that, although his Hon'ble colleague, Sir R. Temple, had himself avowed (p. 24) that Barracks ought not to be selected as the cause of deficit, yet that the whole tenor of the budget-statement was calculated, by the prominence given to this one item of expenditure, to mark it out as the main cause of the deficit, and to throw on the military expenditure the whole onus of the existing deficit. He (SIR H. M. DURAND) hardly thought this quite correct or fair to the Military Department.

He would therefore call the attention of the Council to the fact that, beginning from the time that Mr. Wilson was the Financial Member of this Council, that was from 1859-60, to the nearest period for which results could be obtained correctly, 1867-68, there had been a total Civil Public Works expenditure of upwards of thirty-seven millions (£37,000,000), whereas the total Military Public Works expenditure only amounted to an aggregate of upwards of eight millions (£8,000,000). He would not take up the time of the Council with going over the details, year by year, during the above period, which showed an aggregate on the part of the Civil Works alone of eighteen millions nine hundred thousand (£18,902,319) for construction, and eighteen millions one hundred and eight thousand (£18,108,779) for repairs, salaries, &c., against a sum of upwards of six millions (£6,006,314), for construction of Military Public Works, and upwards of two millions (£2,142,813) for repairs, salaries, &c. Without entering into the series of annual details in comparison of the two sources of Public Work's expenditure—details which the Council might be sure corresponded with the aggregate—he called its attention to these figures in support of what he had stated, that it was hardly fair, where the disparity was so great between Civil and Military Public Works expenditure, to saddle the latter wholly, or at any rate in a very prominent way, with the creation of the deficit.

From the review of our financial position there was, he was afraid, no doubt that our expenditure had, year by year, exceeded not only our revenue but the accommodations by loan, &c., with which the Government had supplemented receipts in order to cover expenditure. This excess could not, in his opinion, be fairly charged to the Military Department alone; it must be distributed among all Departments; and the accumulated deficit should not be saddled on the construction of new Barracks for our European Troops which had lately commenced.

His Hon'ble colleague, Mr. Cowie, had adverted to the designation of reproductive and unproductive public works in reference to the new Barrack expenditure. Without any very nice dissection of this question, he thought the term reproductive works was rather a vague one, and that we were gliding into a somewhat loose use of it, the tendency being to accept the attribute of "reproductive" as in itself a sanction for any enterprise to be provided for by loan. At a time when we were about to embark on an expenditure of some thirty millions for Irrigation Works, besides many millions for State and other Railways, and other classes of works, he thought that this facility

in favour of reproductive works required watching. Besides, the broad division into reproductive and unproductive works, we might divide the former into three classes, viz :—

Reproductive works where the return was almost immediate.

Reproductive works where the return, though pretty certain, was deferred.

The third or last class was one which he would not call, in the face of their classification, unproductive, but in which the returns upon the capital expended were very remote.

Attaching the greatest importance to the maintenance of the credit at present enjoyed by the Government of India in the money-market in England and India, he was anxious to call the attention of the Council to this subject, and to the expediency of distinctly showing to which of these three classes any projects, whether for irrigation or other reproductive works, belonged. No one had more strongly advocated the progress of Irrigation Works, and of other reproductive works, than himself, therefore he had no hesitation, being extremely solicitous of maintaining the high credit of the Government of India, in recommending that the Committee appointed to consider the Income Tax Bill, and to which the Hon'ble Mr. Bullen proposed improvements and additions in the mode of rendering the annual balance-sheet, should also arrange for the more distinct exhibition of the character of reproductive works. He was certain that, if this were carefully and lucidly done, the Government of India would gain, not lose, in the estimation of the money-market. To take a stock of past reproductive works, showing their cost and actual returns, especially when new works were in connection with, or improvement of, the old, might be advantageous. But certainly the Government of India would more and more command the confidence of the money-market, with respect to this growing item of reproductive works, the more distinctly it exhibited their character and prospects to the searching analysis of capitalists, and for this purpose the annual budget-statement might, on the heading in question, be more explicit.

Sir RICHARD TEMPLE said—"I regret to be obliged to refer, though in the briefest terms, to the remarks which have fallen from His Excellency the Commander-in-Chief (Sir William Mansfield).

Remembering that we are both Members of the Executive Government, I cannot follow His Excellency's example by entering into any discussion regarding the financial deliberations of the Government of India.

Only I must state that I have not intended to cast, and in fact have not cast, any reflection whatever on the policy and proceedings of any of my predecessors. In reference to the accounting for the Barrack expenditure, I quoted the recorded authority of my immediate predecessor, Mr. Massey, in support of the manner in which I am now dealing with that expenditure. I explicitly affirmed the correctness of the financial conclusions which he stated according to the manner in which the accounts were then made up. And whatever explanation was offered in my Budget speech on the loans, and the deficits and the barracks, was given (as I expressly stated) "in justice to what had been previously done."

Next, I understood the Commander-in-Chief to say that I ought not to throw the whole burden of the deficit on the Barracks, which deficit ought not to be attributed to that single cause. This I allow, and I also allowed it in the Budget speech. For though I certainly remarked that, under one view of the account, it might be said that the deficit was owing to the Barracks, yet I added "I do not at all mean to admit that the Barracks *ought* to be selected as the cause of deficit. On the contrary, I say that 'Barracks ought *not* thus to be singled out from our general expenditure.'

Then I understood the Commander-in-Chief to say that I applied the word 'intolerable' to what was really the policy of my predecessor. I cannot perceive that I did anything of the kind. What I said was (as can be seen from the printed speech) that the 'running into debt for such a purpose (*i. e.*, the construction of Barracks) would be intolerable.' To that opinion I fully adhere. But I am certainly not aware that it ever formed part of the policy of my predecessor to run into debt in this way.

I am not sure that I can follow the Commander-in-Chief into what I understood him to discuss, as to whether these deficits were 'deficits proper' or 'deficits at all;' or as to whether these military works should be classed as ordinary or really extraordinary; or as to the analogy to be drawn from the management of private capital. The 'deficit' that I have to deal with means the difference which arises when the ordinary expenditure exceeds our income. *That* is the sort of deficit which I wish to be put an end to. The financial principle which I understand, and which has been enunciated by high authority in England, is this, that we must manage either to spend less than we receive, or to receive more than we spend.

Whether the expenditure heretofore incurred on the Barracks should be considered to have been defrayed from borrowed money or not, may

be a question. Be that as it may, however,—whichever way the account be looked at,—the existence of deficit is unfortunately beyond question, and the placing of that deficit in a clear light was the matter which I really had in hand.

I understood His Honour the Lieutenant Governor of Bengal to say that, according to the Schedule attached to the Bill, it would be impossible for the Collectors to guess the income derived by people from all sorts of sources. But in reality this guessing is the manner in which the late License Tax and the Certificate Tax have been worked. It was also the manner in which the Income Tax of 1860 had really to be worked. For is it not notorious that the returns required by that Act were not only vexatious to the people, but useless to the Collectors? In a vast number of cases the Collectors 'surcharged;' it might almost be said that the Act was worked by surcharging. Now what were these surcharges? Why, guesses pure and simple. If the Collectors guessed then, they can do so better now that experience has so much increased. The task may not be easy, but the rough assessment will become more and more of an approximation as time and experience are gained. At all events, it is essential to avoid calling for returns.

In reference to what the Hon'ble Mr. Bullen very properly remarked, to the effect that the interest on the public securities forming part of the paper currency reserve should be credited and shown under some head of income in the Budget, I have to state that this interest *is* so credited, and appears under head XVII on the receipt side of the Budget, entitled 'Interest'."

The Hon'ble Mr. Strachey said: "In justice, my Lord, to the Hon'ble Sir Richard Temple, I think it right to say that there is, in my opinion, no reason whatever to attribute to him the imputation of having thrown discredit on the measures of his predecessor. It is impossible that Sir Richard Temple should have done so, for this simple reason that he has really proposed to do almost nothing beyond what was proposed by the Right Hon'ble Mr. Massey last year. Sir Richard Temple said that the running into debt for such a purpose as building Barracks would be intolerable. It seems to me that this was little more than what Mr. Massey himself said a year ago, and he gave the best possible evidence that that was his real opinion when he invited the legislature to impose the certificate tax. For Mr. Massey might have said with perfect truth that if we charged the expenditure on account of these Barracks, not to income but to a loan, that tax would have been altogether unnecessary. And as His Excellency the Commander-in-Chief has referred to the discussions which took place in the Executive Council under the Govern-

ment of Sir John Lawrence, I think it right to say that exactly the same objection (if I understood His Excellency rightly) which has now been made by His Excellency to the statement of Sir Richard Temple, was made by His Excellency a year ago to the measures of Mr. Massey himself. His Excellency then protested against the imposition of a certificate tax for the purpose of building these barracks, and he complained that Mr. Massey was setting aside the sound policy of the last three years, which had been approved both by the Indian and Home Governments. I myself endeavoured, in the debate on the Budget of last year, to controvert these opinions, and the views which I stated on that occasion were concurred in by the late Viceroy. I think, therefore, that the charge, if I may so call it, which has been brought by His Excellency the Commander-in-Chief against Sir Richard Temple, of having treated his predecessor with scant respect, is really not deserved. It was said by the Hon'ble Mr. Cowie (and I gathered from the remarks of His Excellency the Commander-in-Chief and Sir Henry Durand that they were somewhat inclined to agree with him) that this deficit, which was now to be met, had really been caused by charging the cost of the construction of the barracks to revenue, and the Hon'ble Mr. Cowie stated that he considered that these charges ought to be met by borrowing. I am by no means prepared to admit that there has really been any change of policy in regard to this matter; for, so far as I have been able to discover, the policy which we are following now is in all essential respects the same as the policy followed for the last three years. Certainly it is the same as that followed by Mr. Massey last year. But whatever may have been formerly the case, the policy of the Government, which has been strongly supported by the Secretary of State, is, I think, under present circumstances strictly correct, that we ought not to borrow for these works but pay for them out of income. I think that the answer was complete which has been repeatedly given by Sir John Lawrence and by others to the opinion that charges such as this should not fall on the tax-payers of the present day. If there were any real prospect, when these barracks were completed, that we should be able to reduce our ordinary expenditure on public works, something might be said in favour of borrowing for these works and throwing a portion of the burthen on those who come after us. But in reality there is no such prospect. Demands for works of public improvement may be considered to be practically unlimited. If these barracks ought to be constructed out of borrowed money, the same might with equal propriety be said of our jails, our court-houses and a hundred other necessary works. The most pressing object at the present time is to afford better accommodation for our soldiers, but a thousand other equally pressing demands will infallibly arise hereafter, and indeed they arise already every day: if those

demands are resisted, they are resisted only because it is impossible to meet them. In the debate of last year I mentioned that in two provinces alone, Bengal and Bombay, which had £2,055,000 allotted to them for public works, demands for urgent works in addition, amounting to more than two millions of money, had been made; and I said that the same sort of story might be told of all the other provinces in India. The same thing happened every year. Thus I have now before me letters from the Government of Bengal regarding the allotment of funds for public works during the ensuing year. I find that the total sum granted for Bengal was nearly 1½ millions, out of which only £250,000 were allotted for the construction and maintenance of military buildings; but although nearly the whole of this grant was on account of works for the civil administration and public improvement, His Honour the Lieutenant Governor stated that he had been unable to provide to any extent for any new civil works. His Honour shortly afterwards submitted a list of urgent works which required immediate attention; it includes court-houses and sub-divisional buildings, lock-ups, jails and a great number of other works which have become necessary from improved administration, the increase of Europeans in the country and a number of other causes. Nearly all the jails are said to require alteration to fit them to the improved system of the day, and His Honour goes on to mention many works of most pressing importance for the improvement of the country. It cannot, I fear, at the present time be denied that in consequence of these great demands for military works, we are to some extent starving works of great importance throughout the whole of India. But however much we may regret this, it arose necessarily from the fact that our means are limited. Long after these barracks are completed, our successors will certainly hear the same story, and will find that the requirements of the country are infinitely greater than the means for meeting them. Posterity will have enough to do in meeting its own burthens, without having to meet ours also. If we were now to borrow for barracks, we should be borrowing for works which were quite as legitimate charges against income as any other expenditure of the year. And to borrow for such purposes now would be especially objectionable, when we have embarked on a great system of borrowing for railways and other great works of improvement, which, however profitable they may ultimately prove, will be for many years a heavy burthen on the income of the State.

Fortunately the sum we have now to raise is very insignificant, only the sum of £350,000.

Borrowing being put out of the question, the Government had to consider what was the measure of taxation by which this sum could be raised with the

least possible objection. It is highly satisfactory to find that there has been in this Council (and also outside these doors) a general concurrence in the proposals of Sir Richard Temple. When the certificate tax was imposed, and before that when the license tax was imposed, there were considered to be special reasons for preferring those taxes to a general tax on incomes. The tax in the restricted form it then took was at the time much more generally approved by the public, and for other valid reasons it was preferred by the Legislature. Moreover the sum which it was expected to yield was enough to meet the requirements of the Government as they were then estimated. But, however wise it may have been formerly to adopt the system actually in force, I think it clear that the right conclusion has been come to, that now, when we want more revenue, it is wise to provide for the extension of the existing law. The certificate tax is nothing (as has always been admitted) but an income tax falling on the commercial and professional classes only. It has been, as everybody knows, the constant objection to an income tax in England and in all other countries where an income tax has been imposed, that it fails to recognize the injustice of taxing incomes from temporary sources at the same rate with incomes of a permanent character; and if no remedy has hitherto been applied for this injustice, I believe that the reason is simply this, that it has been found impossible to determine what that remedy should be. But in India we have singled out the classes which derive their income from temporary sources as the sole classes on which the tax is to be imposed. We tax the precarious profits of trade, and the hardly-earned salaries of the servants of Government, but we leave untouched all incomes of a permanent character, such as those for instance of the great landholders of Bengal, who, though they constitute the richest class in all India, and the class which has perhaps derived the greatest advantage from our Government, undoubtedly contributes less in proportion to its means than the very poorest and most degraded classes in the country. I think it clear that it is unjust that such classes as this should escape direct taxation. Even if no more money had been now wanted, I should have said that we ought to correct this injustice by extending direct taxation to all classes of the community. It fortunately happens that the same process by which we correct a flagrant anomaly, and by which we render our system of taxation more equal, enables us, without throwing any additional burthen on the present tax-payers, to obtain the additional funds now required for the service of the State.

His Honour the Lieutenant Governor and the Hon'ble Mr. Shaw Stewart have referred to difficulties which they anticipate in consequence of the fact that, under the Bill, it is not proposed to call for any returns of income, and they have expressed their fears that it will be impossible for Collectors to make any-

thing but the widest guesses of the income of those whom they have to assess. It appears to me that no special or new difficulties of this kind will arise. In point of fact the only serious difficulty in assessing the old income tax—and it is the only serious difficulty felt in assessing the income tax in England—was felt in regard to the assessment of the incomes of those very classes who, for the last three years, had been taxed under the license and certificate taxes. That difficulty has been got over, and it has been generally admitted to have been got over in a manner fairly satisfactory. I can see no reason why, if this difficulty was got over in the case of the Income Tax of 1860, and under the License and Certificate Acts, there should be any difficulty in getting over it under the proposed new law, which practically maintains the whole procedure of the existing Act. There can be no more necessity for the exercise of inquisitorial powers or calling for returns or harassing enquiries in carrying out the proposed law, than there was under the certificate or license taxes.

The Hon'ble Mr. Cowie seems to think that it would have been wise to impose this income tax at a higher rate, and to take the opportunity of carrying out reforms in the customs duties. I think that it cannot be denied that the income tax throws on the professional classes and on persons with fixed incomes a comparatively heavy burden, and I must confess that the evil of this inequality is, in my eyes, aggravated rather than diminished by the fact that the chief sufferers are my own countrymen, on whose energy and integrity India, at the present time, is mainly dependent for its progress. The evil of this inequality is further aggravated by the fact that the same classes on whom the income tax falls the heaviest, are those which pay the largest share of the customs duties. With reference, therefore, to the remarks made by Mr. Cowie, I will say for myself, that I sincerely hope that the time may come when we shall see great reforms carried out in our system of indirect taxation, and I believe that such reforms will conduce to the benefit both of the tax-payer and the State. The measure now before the Council is at any rate a step in the right direction; it is based on a true principle, and while it provides for the immediate necessities of the State, it will tend to make our system of taxation more equal and more just."

His Excellency the President said,—"I cannot allow this discussion to close without expressing in a few words my satisfaction that the proposals made by Sir R. Temple on the part of the Government have been received with such general assent. In such a large scheme as has been submitted, it is impossible to expect that some exception should not be taken to many of its details.

It must be a source of great satisfaction to all those who were responsible for the Budget, as explained on Saturday last, that no serious opposition has been made to it in any quarter whatsoever. I think, however, that I should not be doing my duty were I not to express my entire concurrence in the principle which is really the basis of the financial scheme for the present year—a principle which will, I hope, form for the future a leading feature in Indian Finance; which has been adopted with great advantage at home, and has received the sanction of two Secretaries of State—namely, that expenditure on works which are not of a clearly reproductive nature, are for the future to be borne by the ordinary revenue of the year.

There may be some difference of opinion on this subject, but I believe that it is so inherent a principle of all sound finance, that though the taxpayers of to-day may be called upon to make some present sacrifice, yet that it will eventually be found to lead to such economy and to such a satisfactory mode of dealing with all our great sources of expenditure, that, before long, it will be generally accepted as containing the elements of increased credit and lasting security.

Now, I think that the distinction between reproductive and unproductive works may be very easily drawn. I do not propose here to discuss the question, or to refer to the difference between military barracks and other kindred works, but it is very easy to distinguish these from works which are essentially reproductive, and which may be expected at no very distant time to bring in a direct return to the State, and to discharge in full those monies which have been advanced to them, and so relieve the Exchequer from permanent charge.

Now, there are two great heads of expenditure which may be placed under the reproductive class—namely, the large liabilities which we are about to undertake at a very early period for the purposes of irrigation, and also any expenditure which may be deemed necessary hereafter for the construction of State Railways. There may be other important works—such as the improvement of our harbours, the cleansing and water-supply of our towns, and the erection of bridges in populous places—which, there being therein a distinct prospect of speedy return of capital invested, may be brought into the category of reproductive undertakings. There can be no difficulty therefore in comprehending the principle upon which our finance is to be conducted for the future, namely, that as we have the power, we are determined to make every effort to discharge all expenditure, which is not of the character to which I have referred, out of the ordinary revenue of the year. There is an additional reason why it is so essential that this principle should now be adopted, and that we should declare our determination to adhere to it as long as possible.

This reason was alluded to by my Hon'ble friend Mr. Strachey, and cannot be expressed too strongly.

There is no doubt that probably we are now entering upon a time for borrowing for reproductive objects to a far greater extent than has been attempted before. I am in hopes that our power of borrowing for these great reproductive works may for the future only be limited by the power of the money market to yield, by the extent of our constructive organization, and by the capacity of the revenues of the year to pay the interest of a loan which must in its nature be temporary. Under these circumstances, we are bound to be most prudent, and to show that our general finance is in a thoroughly sound state; for it is possible that if in time of peace we were forced to go to the money market to meet a deficiency in ordinary revenue, we might find investors shy in entrusting their money to a Government which had been unable to conduct their affairs according to the rules that should guide the ordinary affairs of men. But if it is known that we do not propose to make any addition to our permanent debt, that every shilling we borrow will be laid out on works which carry with them the certainty of repayment, and at the same time will add to the general prosperity of the country, we can have no fear that Indian credit will hold the position it now does in the markets of the world. I have a lively recollection of the result of a different course which was taken at home—a course which, I own, I at one time supported, but which, I believe, is now deemed by its authors to have been unsatisfactory and wasteful. I am not without recollection of a circumstance which took place some years ago, when a debt of eleven millions was incurred for coast defences, fortifications which have not been completed, are now almost useless, and will never benefit the posterity who will have to pay for them.

With regard to what Mr. Bullen stated in respect to the Home charges and the deficiency of information that is afforded to the public concerning them, I can only say that a statement of the details of those charges is published every year, and certainly ought to be circulated as widely as possible. I am not prepared to say that advantage might not arise from exhibiting these Home charges in a form a little more minute than they are at present. I will make further enquiry, and if I find it necessary, I will take care to make a representation on the subject to the Secretary of State.

With regard to the remarks of the Mahárájá of Balrámpúr on the subject of the salt tax, I can only say that it is our intention to endeavour, by every means in our power, to reduce the cost of the carriage of salt, and, if necessary, to provide for its local manufacture. The whole question of the duty is one of very great importance and also of difficulty; but with regard to the establish-

ment of such local manufacture as would bring salt more nearly to the homes of the taxpayers, I can only say the Government are at present engaged in the consideration of measures to effect that object, and I hope, before long, we may be able to reduce the price of salt in some of those districts where its price is highest, and the impost is consequently most oppressive to the taxpayer.

I entirely concur with what has been said by my Hon'ble friend Sir Henry Durand, with regard to reproductive undertakings, that the returns of each work should be shown as distinctly as possible, and that the form of accounts should be of that character that everybody should know, in the first place, what are the prospects of the work which has been undertaken, and secondly, what are its exact returns. I think that the whole success of these great works which we are about to undertake, depends upon that principle of account being most rigidly adopted. I believe nothing would tend more to create confidence in the Government than their being able to show the exact position and products of each particular work. I can only say, in conclusion, that I believe everyone of my colleagues is fully impressed with the necessity of endeavouring in every branch of expenditure to enforce the most rigid economy that is consistent with efficiency. It is well known that in every department of the Administration constant efforts are being made to enquire into and to see how expenditure can be kept within its proper limits.

These enquiries have been attended with success in many departments for the last few years, and I am in hopes that whatever may be said with regard to our general policy, a charge of reckless or wilful extravagance will never be laid to the door of the Government of India."

The Motion was put and agreed to.

POLICE SUPERANNUATION FUNDS' BILL.

The Hon'ble SIR RICHARD TEMPLE also moved that the Bill to abolish the Police Superannuation Funds be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

TRANSSHIPMENT OF OPIUM BILL.

The Hon'ble SIR RICHARD TEMPLE also moved that the Bill for imposing a transshipment fee on Opium be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

LAND CUSTOMS' BILL.

The Hon'ble SIR RICHARD TEMPLE also introduced the Bill to make better provision for the collection of land customs on certain foreign frontiers of the Presidencies of Fort Saint George and Bombay, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

CUSTOMS' DUTIES BILL.

The Hon'ble SIR RICHARD TEMPLE also introduced the Bill to amend the law relating to Customs' Duties, and moved that it be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill for imposing duties on Income and Profits arising from Offices, Property, Professions and Trades—the Hon'ble Messrs. Maine, Cockerell, Gordon Forbes, Cowie, Shaw Stewart, Bullen and the Mover.

On the Bill to abolish the Police Superannuation Funds—the Hon'ble Messrs. Maine, Strachey, Cockerell, Gordon Forbes, Shaw Stewart and the Mover.

On the Bill for imposing a transshipment fee on Opium—the Hon'ble Messrs. Maine, Cowie, Shaw Stewart, Bullen and the Mover.

On the Bill to make better provision for the collection of land customs on certain foreign frontiers of the Presidencies of Fort Saint George and Bombay —the Hon'ble Messrs. Maine, Gordon Forbes, Cowie, Shaw Stewart, Bullen and the Mover.

On the Bill to amend the law relating to Customs Duties—the Hon'ble Messrs. Maine, Gordon Forbes, Cowie, Shaw Stewart, Bullen and the Mover.

The Council adjourned till the 12th March 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

CALCUTTA,
The 11*th March* 1869.

Office Supdt. Govt. Printing —No. 11331 L. C.—16-3-69.—200.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 12th March 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, G. C. S. I., K. C. B.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Rájá Shioráj Singh, C. S. I.

The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpúr.

The Hon'ble G. S. Forbes.

The Hon'ble D. Cowie.

The Hon'ble M. J. Shaw Stewart.

FOREST RULES (BRITISH BURMA) BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to give validity to certain Rules for the administration of Government Forests in British Burma be taken into consideration. He said that this Bill had been reported by the Select Committee with a merely verbal alteration. But as it might have the effect of stopping certain suits which had been either threatened or brought in the Recorder's Court at Maulmain, he would again explain its object. Act XXX of 1854 was an Act to provide for the levy of customs in the Arakan, Pegu, Martaban and Tenasserim provinces. Sections 6, 7 and 8 enabled the Governor General in Council to impose import duties on teak-timber entering the province from foreign territory by the rivers, and to make Rules for the floating of such timber, the penalty on contravention of the Rules being confiscation. These sections had therefore an especial bearing on the timber brought to Maulmain for exportation, and Rules appear to have been at once made under them, and duties imposed. More recently, Act VII of 1865 became law, which enabled the Government to make Rules relative to timber floated or

otherwise, but the timber must be the produce of Government forests. It received the assent of the Governor General on February 24th 1865, and in August of that year the Rules which MR. MAINE held in his hand were framed. They purported to have been made under Act VII of 1865, and the largest portion of them were undoubtedly valid under that Act. Certain of them, however, and particularly those relating to the station at Kuddo, were of doubtful validity, inasmuch as they applied to foreign-grown timber and imposed duties. The whole of the Rules were within the competence of the Government to make; but the mistake had been made of amalgamating them instead of issuing them separately under the two Acts. On the question whether timber in British Burma was unduly burdened with duty, MR. MAINE offered no opinion; but that question ought to be considered on its merits; the discussion on it should be initiated in the Financial Department and continued in this Council upon full information. It ought not to be settled through the discovery, if discovery it were, that certain Rules had been wrongly headed. The Rules purported to have been confirmed by the Government of India. MR. MAINE was absent on leave in England at the time of their issue, but he could not say that if he had been in India they would necessarily have come under his notice; he desired to state that, under orders issued by the late Viceroy not long before his departure, all Rules made under Acts,—which Rules were in fact a subordinate legislation,—would be sent to the Legislative Department for review, and if necessary for revision, so that it might be hoped that even this venial class of error would not again occur.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL COURTS (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART presented the Report of the Select Committee on the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay.

CRIMINAL PROCEDURE BILL.

The Hon'ble MR. SHAW STEWART also moved that the Report of the Select Committee on the Bill for regulating the procedure of the Courts of Criminal Judicature not established by Royal Charter be taken into consideration. He said that it would be in the recollection of the Council that when he first obtained leave to introduce this Bill, he had said that since the Code had been passed numerous suggestions for its amendment had been received by the Executive Government. Those papers were referred to the late Mr. Gordon who under-

took the task of comparing and examining them. At his death, the papers were referred to an informal Committee consisting of the Hon'ble Messrs. Brandreth, Hobhouse, and himself. In the course of the session of last year, MR. SHAW STEWART received an intimation from the Home Office that the time had arrived for bringing forward a revision of the Code, and he obtained leave to introduce a Bill. When he introduced the Bill, he did not refer it to a Select Committee at once, but the Bill was merely introduced and published for a year. In the course of that period but few reports on the subject had been received. The suggestions received were not very numerous or important, the principal being from the Government of Madras and the High Court and District Officers of that Presidency, and they had received the careful consideration of the Committee. Since the Bill was published, as he stated at the time, a despatch had been received from the Secretary of State, expressing the wish of the Home Government that the subject of the general amendment of the Code should be left to the Indian Law Commissioners, and that at present this Council should confine itself to amending the provisions of the Code without touching on any question involving matters of principle. These instructions had been carefully attended to by the Select Committee, which had been fortunately composed of officers who represented many different parts of India. Besides having the assistance of the members of the Executive Government in charge of the Legislative and Home Departments, the Committee had consisted of members who were acquainted with the procedure in Bengal, Madras and Bombay, and the Non-Regulation Provinces of India, and the subjects brought before them had, therefore, received due attention. The report of the Committee was so full and detailed, that MR. SHAW STEWART thought there were very few points on which it would be necessary for him to make any remarks. He should, however, go through the Bill and explain the few points on which further explanation seemed necessary, reserving for the present any remarks regarding the sections which he proposed to amend.

He would first refer to the section marked 23A. This was one of the sections the object of which was to enable the Local Government to delegate to officers under it the power of appointing Magistrates and Subordinate Magistrates. This would materially assist the administration of justice in the country. At present every appointment of a Magistrate, however small his jurisdiction, was required to be made by the Government and published in the Government Gazette. The power of delegating that authority to officers such as Commissioners and other high officers, would be very convenient, both as admitting of such appointments being made expeditiously and relieving the Gazettes of notifications which now crowded them.

He next came to section 61, in which an amendment was made with the intention of allowing a fine imposed on the offender to be levied on any property of his wherever it might be found. By the section as it now stood in the Code, the levying of the fine by distress and sale of property was limited to property within the jurisdiction of the Court passing sentence. It often happened that an offender had made away with his property and removed it to a different district: the power of levying the fine by distress of such property would now be given to the Court by which the offender was sentenced.

By section 114 as it stood on the interpretation of more than one High Court, search-warrants could not be issued unless the officer issuing the warrant specified exactly the property for which search was to be made. It was believed by the Committee that that was an inconvenient restriction; that it was often necessary, in the event of a crime being committed, to search the neighbouring houses for the purpose of tracing anything that might lead to the discovery of the offender. The amended section would therefore admit of the exercise of that power when the Court considered that the enquiry would be furthered by the inspection of any house or place.

The next sections to which he would refer were sections 130 to 132 C, which related to the proceedings to be taken when property seized by the Police was brought before the Court. The law had been interpreted in different ways in different parts of India, and there was considerable doubt as to what should be done with property brought before a Court, and regarding which an offence appeared to have been committed. Amendments had been adopted which admitted of the Criminal Courts passing any order which they thought right for the disposal of such property.

Section 185, as it stood before, provided for the property of an offender absconding and forfeited under section 184 being restored, if within two years after the attachment the offender surrendered himself and proved that he did not abscond for the purpose of avoiding justice. There was no provision for the restoration of the property in the cases of the offender being apprehended or not being brought to trial. It was quite possible that after property was forfeited it might be found that the offence was not committed, and for many other reasons it might be undesirable to bring the person to trial. The Committee had therefore worded the section so that property might be restored to the offender if he appeared or was found within two years after the attachment of the property, and proved to the satisfaction of the Court trying him for the offence of which he was accused, or, if not tried or committed for trial for that offence, to the satisfaction of the Magistrate of the District, that he did not abscond or conceal himself for the purpose of evading justice.

In sections 209, 210 and 211 amendments had been made with the object of correcting and amending the law relating to the tender of pardon to an accomplice, with the view to his becoming Queen's evidence. Pardon might now be tendered by any Magistrate authorized to take up a case triable by the Court of Session, and the Court of Session was empowered during the progress of a trial to tender a pardon, instead of being obliged, as at present, to refer the accused person to the Magistrate for such purpose. The procedure before the Court of Session would be simplified by this change.

In section 270, as stated in the report of the Select Committee, an alteration which appeared in the Bill as recently drawn, had not been adopted. It was proposed originally to extend the power of giving compensation for frivolous or vexatious complaints, to cases of somewhat greater importance than those to which it now extended. This was considered a question of principle which should be left to be dealt with by the Indian Law Commissioners, but the Committee had made some slight amendments in the section.

The next section he would notice was section 276. By the law as it stood, great inconvenience was experienced from the direction that, when a Subordinate Magistrate found during a trial that he had not jurisdiction, he must refer the matter to the Magistrate of the District. The Magistrate of the District might at the time be at a great distance from the Magistrate trying the case, and there might be some other competent Magistrate close at hand. Power had therefore been given to a Magistrate trying a case in which he found he had no jurisdiction, to refer the case to the Magistrate of the District, or to such other Magistrate as the Magistrate of the District might direct.

In section 322 a discretionary power had been given to the Local Government, at the time that it directed trial in any district to be by jury, to direct that the jurors in such trials shall be sworn. There was some difference of opinion as to the propriety of administering an oath to jurors; it was therefore felt that it would be better to leave a discretion to the Local Governments. In some parts of the country such a procedure might be very desirable; in others it might not: the Local Government would therefore have the power of directing the oath to be administered or not as it thought fit.

In section 395 an amendment had been made with the object of securing the more frequent examination of criminal lunatics. At present such persons were only required to be examined once in every twelve months. It was proposed to require the examination to be made every three months. It was very undesirable that a man who was restored to sanity should remain for

twelve months in a lunatic asylum before an examination into his case was made.

In sections 413 and 415 the Committee had made alterations which would admit of appeals being preferred beyond the period of thirty days now prescribed.

Section 422 contained perhaps one of the most important points that the Committee had taken cognizance of. By the section as it stood, it was held by one of the High Courts that it was competent to the Appellate Court to enhance, in certain cases, the sentence appealed against. The Committee had no hesitation in considering that that power was not intended to be given by the framers of the Code. They had therefore added words which would prevent such enhancement in future.

There was also another alteration in the same section. It appeared that the language of this section of the Code was vague as to the attendance of the appellant at the further enquiry required by the Appellate Court. It might be very inconvenient to take the appellant from the jail in which he was confined, to a distant part of the district where the further enquiry was to take place; and it might also, in the opinion of the Appellate Court, be unnecessary that this should be done. The Committee had therefore given to the Appellate Court the power of directing that the appellant should be present, and had left to the Magistrate the option of having the appellant present or not, even if the Appellate Court did not direct it.

There was one section the necessity for amending which was brought before the Committee, but after much consideration it was determined to omit it. That was section 138, which required that every person who was aware of the commission of certain offences should give information thereof to the nearest Police officer. The offences mentioned in the section were all of a formidable nature, such as robbery, dacoity, lurking house-trespass by force, and other offences of a serious nature; but from this list one of the most serious offences had been omitted. It had been argued that murder ought to be included in that list. MR. SHAW STEWART believed he was right in saying that the reason why the framers of the Code did not insert murder in that list was, if the concealment of murder was made punishable, it would be difficult to get information of those domestic murders which were unfortunately somewhat common in this country. A murder took place in a house, and its inmates concealed it, the police went to make enquiries, and these inmates were the only persons from whom they could gain information of the offence; but of course they would give no information if it was punishable to have concealed their knowledge.

On the whole the Committee were of opinion that it was a question of principle that had been settled by the framers of the Code, and had better be left for the consideration of the Indian Law Commissioners.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART then moved that, in section 23G, the word "otherwise" be inserted after the word "as" in line 1. The object of the amendment was to assert the subordination of all Magistrates in the district to the Magistrate of the District. It appeared that there was considerable doubt as to the extent of that subordination. Some officers in the position of Assistant Magistrate, but with full powers, thought that in consequence of appeals from their decisions lying directly to the Sessions Court, they were exempted from subordination to the Magistrate of the District. That opinion had been put down as much as possible by the Executive Government, but still the law was not clear on the subject. The Committee had therefore recommended that that subordination should be clearly stated. The word now proposed to be inserted appeared to have been inadvertently omitted.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that the following section be included under section IV of the Bill:—

"409. Any person convicted on a trial held by the Magistrate of the District or other officer exercising the powers of a Magistrate, or required by such Magistrate or other officer under section 295 or 296 to give security for good behaviour, may appeal to the Court of Session of the District."

He said, as stated in the report of the Committee, the provisions of the law relating to appeals were carefully preserved; but section 409, as it stood in the Code, contained the following words at the close of it:—"may appeal to the Court of Session to which the Magistrate or other officer is subordinate. To prevent mistakes, it was as well to avoid any reference to the subordination of Magistrates to any one except the Magistrate of the District. It was therefore proposed to insert the words "of the District" after the words "Court of Session," in lieu of the words above referred to.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that the following section be substituted for section 435:—

"435. In the case of offences specified in the seventh column of the schedule to this Act annexed as triable by the Court of Session only, or by the Court of Session or Magistrate of the District, the Court of Session may order the commitment of any accused person who may

have been discharged by any Magistrate. In the case of such offences the Court of Session may order an enquiry into any complaint which any Magistrate may have dismissed without enquiry.

"In the case of such offences, the Magistrate of the District shall have like powers where the Magistrate who has discharged the accused person or dismissed the complaint without enquiry is a Subordinate Magistrate.

"If the Court of Session consider that any person convicted by a Magistrate has committed an offence not triable by such Magistrate, it may annul the conviction and sentence, and direct the commitment of the accused person for trial before itself."

He said that section 435 as it stood gave the Court of Session the power of ordering the committal of an accused person discharged by the Magistrate, or of ordering an enquiry into any complaint dismissed by the Magistrate without enquiry. The only alteration proposed by the amendment went to give a like power to the Magistrate of the District as regarded Subordinate Magistrates.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART moved that, in the last clause of section 44, the words 'to the person injured' and 'to him' be omitted, and that, in section 133, for "138," the figures "108" be substituted.

The Motions were severally put and agreed to.

The Hon'ble MR. SHAW STEWART moved that, in section 322, the words "at the same time," be omitted in the second clause of the section.

These words, he said, had been inadvertently added, and their omission would enable the Local Governments to direct that jurors should take oaths in cases where they had already ordered that trials should be by jury.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART further moved that, in the seventh column of the schedule, opposite section 347, the word "*ditto*" be read in lieu of the words "*Court of Session or Magistrate of the District:*" and that opposite section 381, the words "*Court of Session or Magistrate of the District,*" be read in lieu of the word "*ditto.*"

The Motions were severally put and agreed to.

The Hon'ble MR. SHAW STEWART then moved that the Bill as amended by the Select Committee together with the further amendments now adopted be passed.

The Motion was put and agreed to.

PRISONERS' TESTIMONY BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to provide facilities for obtaining the evidence of prisoners, and for service of process upon them.

HIGH COURT (N. W. P.) CRIMINAL PROCEDURE BILL.

The Hon'ble MR. MAINE presented the Report of the Select Committee on the Bill to amend the procedure of the High Court of Judicature for the North-Western Provinces.

The Council adjourned till the 18th March 1869.

WHITLEY STOKES,

Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 12*th March* 1869.

Office Supdt. Govt. Printing.—No. 11388 L. C.—11-3-69.—180.

Abstract of the Proceedings of the Council of the Governor General of India assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Thursday, the 18th March 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I., of Balrámpúr.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

INCOME TAX BILL.

The Hon'ble SIR RICHARD TEMPLE, in presenting the report of the Select Committee on the Bill for imposing duties on Income and Profits arising from Offices, Property, Professions and Trades, said:—

"The Bill as amended by the Committee is the same substantially as that which I presented to the Council at the previous special Meeting (March 11th). The alterations are few, and some of them only need now be selected for notice. The first point to be noticed is paragraph 4 of the Committee's report, where they say 'We have struck out the exemption of Insurance Companies.' At first this exemption was proposed, not because we thought that such Companies, however beneficial, should be exempt, but because we feared that it would not be possible to assess them properly. And no doubt under a strictly regular procedure there would be difficulty. But after consulting the non-official members of the Committee, we believe that, under the rough procedure

contemplated by this Bill, it will be possible to arrive at a sort of estimate which may approach what is fair. It seems better therefore to let the Collector ascertain the assessable profits as nearly as he can. And we have therefore, on the general principle, disallowed the proposed exemption.

In their paragraph 5, the Committee say 'We have omitted in section 6 the words so residing or serving, and thus made chargeable salaries, &c., paid in British India to the agents of persons residing abroad.'

In reference to this we have considered whether the interest on Indian Government securities, drawn in India by agents on behalf of persons residing abroad, should be liable to the tax. Now, considering that principals in India, drawing their own interest in India, are liable to the tax, we hold that if any person draws the interest in India through an agent, he is liable equally as if he had drawn it himself while residing in the country. We do not see how a distinction can be drawn between the two cases. This decision we have arrived at after carefully consulting the non-official members of the Committee. But we fully maintain the rule that no attempt should be made to impose this tax on persons residing out of India and drawing also out of India (that is, in England) interest on Indian Government securities.

It will be noted that, in their 8th paragraph, the Committee say 'We have extended the privilege of paying by instalments to cases where the amount payable is rupees twenty-four.'

This is a concession for the convenience of the comparatively poorer classes of tax-payers.

Further, we have considered the practicability alluded to by me at the last special Meeting of the Council, of permitting to employés of private firms to pay the tax by monthly instalments in the same manner as the servants of Government and of Companies. We found, however, after consulting the non-official members of the Committee, that this could not be managed without calling on the firms to render returns of their salaried servants; and this would be an infringement of the principle of the Act, whereby it was decided to abstain from demanding any returns that could possibly be avoided.

In thus avoiding returns of every kind throughout this Act (with the fewest possible exceptions), we consulted, not the fiscal advantage of the Government, but the convenience of the tax-payers. We hope that, appreciating this consideration, the tax-payers will meet the Government half-way, and will

afford such fair and reasonable assistance to the Collectors as may be required for the making of a proper assessment. We hope that, in this respect, the present rough procedure may work so well that we may not in any future year be obliged to ask this Council for power to demand returns.

Such being the few remarks I have to make on the details of the Bill, I must further mention that we have considered two memorials presented by the British Indian Association, one of a general character against the principle and policy of the Bill; the other adverting to some of its details.

As regards the general objections to the measure, I cannot give a stronger answer than that which is contained in the substance of my Budget Statement to this Council. The memorialists may be sure that we are perfectly satisfied and convinced of the lawfulness, legality, justice and expediency of applying this tax to land-owners, whether under permanent settlement or otherwise.

The memorialists seem to think that I have not analysed the causes of the increase of expenditure that has been going on for years, and have not fully explained the recent deficits. Hereon I must refer them to my Budget exposition, where the deficits of the two years which I had to deal with *are* explained. As to analysis of expenditure, I did in that exposition analyse each item of increase, in general terms, according to the limited time and space at my disposal. No doubt, this analysis referred only to the two years with which I was concerned. For the increases of the years prior to this period, I would refer the memorialists to the statements and expositions presented year by year by my predecessors to this Council. If these be not enough, I would further invite the attention of the memorialists to a volume (recently published by Government) of the financial statistics of the past five years, where every sort of information can be found, in abundant detail, tabulated specially to facilitate comparison. It is only by bestowing upon these publications the attention they merit, that the progress of British Indian finance can be understood.

Of the particular objections, two may be selected for brief notice. The memorialists urge that various charges incident to land may be deducted from the profits assessable to this tax: in other words, that the tax may be assessed on the nett profits of land after deduction of various expenses. We have decided not to insert any conditions of this sort in the Act. In cases such as that of Companies, we have used the words nett profits. And no doubt, as regards many kinds of business, there is no difficulty in deducting all the expenses really necessary for the carrying on of that business. In the case of land, however, there is some difficulty. For it is not always easy to say what is the *necessary*

expense of management. That would vary according to the circumstances or even the habits of the landlord; would depend on whether he were an absentee or a resident on the spot; and so on. There would be further variation according to the circumstances of the different parts of India. We have therefore preferred to leave all this to be decided by Executive Rules to be issued by the Government. This course will be preferable to anything like legislative elaboration of the conditions. I may say, however, that the Executive Government does not desire to allow less to the landlord in these respects than what was allowed in the first income-tax. Without giving any precise engagement, I may add that, as a rule, what was allowed in the first income-tax will be allowed in this one also.

The other objection refers to the section which prescribes that arrears of this tax are to be realised by the same process as arrears of land-revenue. This the memorialists seem to think will somehow be an infringement of the permanent settlement. I cannot see the force of this objection. When land, even under permanent settlement, may be sold in satisfaction of private debts, why may it not be sold in satisfaction of the lawful dues of the State? It is hoped, however, that no necessity for proceeding to such an extremity under this Act will ever arise. I may add that this section was taken from the Certificate Tax Act.

I have, in conclusion, to thank the non-official members of the Select Committee for the useful and practical advice afforded by them on all parts of the Bill. And once more, on this as on so many other occasions, I have to declare our obligations to the Secretary to the Council."

The Hon'ble MR. BULLEN said, if he understood correctly what had fallen from the Hon'ble Sir Richard Temple with reference to the memorial of the British Indian Association, he (Sir Richard Temple) had said that provision was made by the Bill for the deduction from gross profits of the expenses incident to the carrying on of all trades and occupations, but that the same exemption could not be made in the case of profits derived from land. MR. BULLEN did not know under what section of the Bill the deductions referred to would be made, but as far as he had been able to discover, there was no section in the Bill which provided for the making of such deductions. He considered it a great oversight on the part of the Select Committee, that the question of nett profits was not brought up and fully discussed in Committee. Part III of the Bill, relating to Companies, contained a distinct provision that the tax should be levied only on the nett profits; and Part IV provided that the duty should

be levied on all income and profits: the inference was that the duty under this Part should be levied, not on the nett profits, but on the gross profits. He was aware that it was not the intention of the Government that the duties levied on profits derived from trades and occupations should be levied on the gross income, but he thought a provision to that effect should be laid down, either in the Bill or the Executive Rules to be passed under the Act, so that it should be made clear that the duties would be chargeable only on the nett profits. He would only mention a few items which it was clearly necessary should be deducted before the assessment on profits was made. In the case of a person in trade, there could be no question that the rent of the business-premises was a fair charge against profits; in the same manner the salaries of persons employed by the trader should be deducted; so also losses occasioned by the insolvency of debtors, and also the interest on borrowed capital, if any. In the case of the owners of land, the expenses of the management of the land were surely a fair charge against the profits, and also the interest payable to the mortgagee, supposing the person in possession to hold the land subject to a mortgage. In the case of house-owners there would be the cost of triennial repairs and the collection of rents, the insurance, and the interest on mortgage, if any. Even in the case of persons residing out of India, who drew their incomes through the agency of firms or individuals, these firms or individuals exacted a certain commission on the duties they performed on account of their absent principals, and the commission which they charged should be deducted out of the income before it was assessed for duty under the Act. If that were not done, in all the cases which MR. BULLEN had instanced, the Government would get the tax twice over; first, from the person who was primarily liable; secondly, from the salaries of the assistants; from the owners of the houses, and from the capitalist who had lent money and who had to return the amount of interest received on his loan which in itself was chargeable for income-tax. He presumed there could be no doubt as to what the intention of the Legislature was, and he had only made these observations with the object of eliciting a distinct declaration on the part of the Government that the rules to be issued under the Act would be framed with the greatest exactness so as to provide for the omission to which he had referred

The Hon'ble MR. MAINE said that for his own part he could not accept the charge, if charge it were, which his Hon'ble friend had made against the Select Committee. Part III of the Bill applied to Companies, and there the expression "nett profits" was used because the Companies would make up their own accounts for the purposes of the Act, and would require some guidance in making up such accounts. Part IV referred to the rough and in some degree

conjectural assessment of income and profits by the Collector. No doubt there was not a definition of income or profits in this Part; but that was an essential feature of the Bill, and it had all along been intended that, as soon as the Bill became law, the Financial Department should issue Rules for the guidance of officers, which would deal with all the points adverted to by Mr. Bullen, and would instruct the Collectors to make practically the same deductions which had been made on the assessments for the income-tax. The word "nett" would have been out of place in Part IV, and its omission had been deliberately intended.

The Hon'ble MR. BULLEN continued—The Hon'ble Sir Richard Temple had alluded to the opinions which the non-official Members of the Council had given with reference to the question of exempting Insurance Companies. He himself could not draw any real distinction between the profits made by Insurance Companies, and any other profits derived from trade. It might be difficult to define exactly what were the profits derived from India of a Company domiciled in England but doing business here; but he did not think there was more difficulty in determining these than in determining the profits of other Companies similarly situated. He would instance the Peninsular and Oriental Steam Navigation Company. This Bill proposed to make certain of their ships liable to income-tax in respect of the profits made from their Indian business. It did not seem to him more difficult to define the profits of an Insurance Company from its Indian business, than the profits made by ships which traded, not only between Indian ports alone, but between Indian and other ports.

Another question which arose in Committee was with reference to taxing the incomes of persons resident in England, but deriving their incomes from the interest of Government securities here. He could not draw any distinction between incomes derived from Government securities and incomes derived from any other source. It was clearly not the intention of the Bill, for instance, that the owner of Indigo factories in India, residing in England, but carrying on the cultivation by means of agents here, should be exempted from the tax; and if a person residing in England, and deriving an income from that description of property, was not exempted, he did not see why any person residing out of India whose means were derived from the interest on Indian securities payable in India should be exempted. The only clear line which could be drawn was the line which the Bill had drawn, *viz.*, that paper enfaced for payment of interest by drafts on India should be exempted. The effect of that was to place such securities on the same footing

as loans raised by the Secretary of State, which the Indian Government had no power to tax. He thought that that made an intelligible distinction, and was the only line which could be properly drawn.

It occurred to him, on reading the Bill since the report of the Select Committee had been made, that there was a little ambiguity in section 14. He believed, however, that the intention of the Act was clear: the intention was that incomes of less amount than Rs. 500 a year, should be exempt from the tax. The Bill provided first, in Part II, section 7, that incomes amounting to less than Rs. 41-10-8 per month, which was exactly Rs. 500 a year, should not be chargeable under that Part; and section 14 provided that, in making such assessment, income exempted under section 7 should be treated as chargeable under this Part. That appeared inconsistent; but he believed it was intended that, if a person whose salary was less than Rs. 500 a year had an income from other sources also, the two might be added together, and the person thus made liable to the tax. That was also a point which MR. BULLEN thought should be clearly laid down in the Rules to which he had already referred—

The Hon'ble MR. MAINE did not think that there was any ambiguity. Possibly his Hon'ble friend had not read section 14 in connection with section 11. In order that the Collector might make an assessment under section 11, he must assess "in accordance with schedule A," or, in other words, he must bring up the annual income to Rs. 500. It might happen, however, that the income or profits chargeable under Part IV did not quite come up to the minimum. In that case, if the minimum could be reached by adding the salary of an office, that salary clearly ought to be taken into account, even though so small in itself as to be exempted under section 7.

The Hon'ble MR. BULLEN resumed—He did not think there was any doubt about the intention; but if that intention was not clearly defined either in the Bill or the Rules, some over-zealous Deputy Collector might think it his duty to tax incomes of the lowest amount, because it was nowhere distinctly provided that incomes under Rs. 500 should not be liable to tax under the Act. There were distinct provisions on this point in the Income Tax Act of 1860 and in the Certificate Act, but there was no provision in this Bill that incomes under Rs. 500 per annum should not be taxed; though of course it might be inferred that such was the intention, because the schedule attached to the Bill does not provide the amount of tax to be imposed on incomes under that amount.

In conclusion, he would wish, with His Excellency the President's permission, to take this opportunity of putting a question to the Hon'ble Member in charge of the Financial Department. The question that he wished to put was with reference to the payments made by the Government of India on account of the Abyssinian Expedition. It was no secret—indeed the Hon'ble Member had referred to the matter in his Budget Statement—that, to make these payments, large sums had been borrowed by the Government from the Banks of Bengal and Bombay; and commercial gentlemen were well aware that the advances were made by those Banks at rather high rates of interest. MR. BULLEN would therefore ask—*first*, if the Hon'ble Member would state the amount of interest paid or payable to the Banks on account of advances made by them to the Government for the expenses of the Abyssinian Expedition; and, *secondly*, whether it had been intimated to the Secretary of State that such interest should be charged to the English Government, and, if so, whether the English Government had agreed to its repayment or otherwise.

HIS EXCELLENCY THE PRESIDENT said, before the Hon'ble Sir Richard Temple answered the questions of the Hon'ble Member, he thought it right to remark that, according to the Rules of the Council, the questions were not strictly in order; and, therefore, in allowing the questions to be put, he wished to guard himself against its being made a precedent in future. He was induced to allow the questions to be put, though they were not strictly in order, because this was the last day on which the questions could be put.

The Hon'ble SIR RICHARD TEMPLE said, this particular point had for some time past engaged the careful attention of the Financial Department. He was not prepared to state at this moment the exact items, which were the subject of complicated accounts. But he might state that, although the adjustment of the Abyssinian advances and expenditure was proceeding with unexampled rapidity, the greater part of the advances having already been refunded to the Indian Government, yet, as these complicated accounts approached final adjustment, there would be many items, claims, counter-claims, debits, credits and the like, to be settled. Among these items there would probably be the item alluded to by the Hon'ble Member. He trusted that it would be seen that this answer was as much as his official obligations would permit him to give.

HIS EXCELLENCY THE PRESIDENT said, he might further state that the conditions under which advances should be made by this Government on account of the Abyssinian Expedition were very strictly laid down at the time that

Expedition commenced, and His Excellency had every reason to believe that those conditions would be strictly fulfilled, and if they were, ample justice would be done both to the Home and the Indian Governments.

The Hon'ble Sir Richard Temple having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble Sir Richard Temple then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Sir Richard Temple then moved that the Bill as amended be passed. He said that he desired to express his particular thanks to each Member of the Council for the generous confidence which had been shown towards the Financial Department in all the discussions relating to the Budget: he hoped that this tax would be administered so as to ensure the safety of the revenue without unnecessary trouble to the people; and he would assure the Council that the best endeavours of the Government would be given to ensure, with the help of this tax, that financial equilibrium which had been set forth in the Budget.

The Motion was put and agreed to.

POLICE SUPERANNUATION FUNDS' BILL.

The Hon'ble Sir Richard Temple presented the Report of the Select Committee on the Bill to abolish the Police Superannuation Funds.

The Hon'ble Sir Richard Temple having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble Sir Richard Temple moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Sir Richard Temple then moved that the Bill as amended be passed.

The Motion was put and agreed to.

LAND CUSTOMS' BILL.

The Hon'ble Sir RICHARD TEMPLE presented the Report of the Select Committee on the Bill to make better provision for the collection of land customs on certain foreign frontiers of the Presidencies of Fort Saint George and Bombay.

The Hon'ble Sir RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble Sir RICHARD TEMPLE moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble Sir RICHARD TEMPLE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CUSTOMS DUTIES' BILL.

The Hon'ble SIR RICHARD TEMPLE also presented the Report of the Select Committee on the Bill to amend the law relating to Customs Duties. He said the Council would remember that this was the particular Bill required to allow of the alterations necessary on the tariff valuations of certain articles liable to Customs Duties. If the Council passed this Bill, the executive measure to which it would give immediate effect was such as to afford the trading and commercial communities facilities in their intercourse with the Customs Department.

The Hon'ble MR. BULLEN said that, in consenting to the passing of this Bill, and thus placing in the hands of the Executive Government the power of lowering or raising the tariff valuations, he trusted it was distinctly understood that no increase in the valuations would, on other occasions, be made by the Government without previous communication as hitherto with the various Chambers of Commerce. He wished distinctly to guard himself against being understood to agree to the placing in the hands of the Executive Government the unrestricted power of increasing the tariff valuations. He would, however, have no objections to make to the passing of the Bill if the Government would give an assurance that they would communicate with the representatives of the mercantile community whenever it might be their intention to increase the tariff valuations.

The Hon'ble SIR RICHARD TEMPLE said, he had no hesitation in assuring the Hon'ble Member that, before proposing any increase whatever on the tariff valua-

tions, the Government would be most careful to consult those most interested in the matter.

The Hon'ble MR. BULLEN said he trusted that the Government would soon see its way to effect a large revision of both the import and export tariff, especially of the export tariff, in which many articles were made dutiable in opposition to sound principles of political economy. He might instance the export duty on Native made cotton piece goods ; he might also refer to the export on grain. He was aware that grain was an item from which a large export duty was derived, and that the Government might not be prepared to reduce the duty on that article at present. The present rate of three annas per maund was a very heavy duty. In Burma and the East Coast ports it amounted to a charge of fifteen per cent. on the cost, and this when a large trade had sprung up in Saigon and Siam, whence the export was free. From 1,300 tons, which comprised the import of rice from Siam and Cochin China into Europe in 1867, it increased last year to 37,000 tons, and in all probability the import would be larger this year.

The Hon'ble SIR RICHARD TEMPLE said that, in reply to the observations just made, he could only refer the Hon'ble Member to that passage in his Budget Statement in which he referred in a general way to the subject of tariff valuations and import and export duties.

The Hon'ble SIR RICHARD TEMPLE having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then moved that the Report be taken into consideration.

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council adjourned till the 19th March 1869.

WHITLEY STOKES,

Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 18th March 1869.

Office Supdt Govt. Printing.—No. 11597 L. C.—23-3-69.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 19th March 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*
Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble F. R. Cockerell.
The Hon'ble Rájá Shioráj Singh, C. S. I.
The Hon'ble Mahárájá Sir Dig-Bijay Singh, Bahádur, K. C. S. I. of Balrámpúr.
The Hon'ble D. Cowie.
The Hon'ble M. J. Shaw Stewart.
The Hon'ble J. N. Bullen.

HIGH COURT (N. W. P.) CRIMINAL PROCEDURE BILL.

The Hon'ble MR. MAINE moved that the Report of the Select Committee on the Bill to amend the procedure of the High Court of Judicature for the North-Western Provinces be taken into consideration. He said that this Bill related only to technical matters of no general importance. The High Court of the North-Western Provinces had an ordinary jurisdiction for the trial of European subjects, and an extraordinary jurisdiction for the trial of others than Europeans. Whenever an European and a Native were charged together, the European was tried under the ordinary, and the Native under the extraordinary jurisdiction of the Court; but both could not be tried together as they could in England. By this Bill they could now be tried together; but as a European would be entitled to demand to be tried by a jury, the majority of whom were his own countrymen, the Native might object, and then the two men would have to be tried separately as at present. The Bill as originally introduced contained only two sections to this effect, but since then the Government of the

North-Western Provinces had asked the Council to set at rest a few doubts of small importance which had arisen. In cases where a petition was presented or an application made which the Court directed should be verified by affidavit, a doubt had arisen whether a person making a false verification would be liable to be punished for perjury. Another doubt was whether the Court had power to award costs when any petition, application or motion came before it in the exercise of any of its jurisdictions, and accordingly two more sections had been included in the Bill in order to do away with those doubts.

The Motion was put and agreed to.

The Hon'ble MR. MAINE also moved that the Bill as amended be passed.

The Motion was put and agreed to.

CIVIL COURTS' (BOMBAY) BILL.

The Hon'ble MR. SHAW STEWART said, in moving that the Report of the Select Committee on the Bill to consolidate and amend the law relating to the District and Subordinate Civil Courts in the Presidency of Bombay be taken into consideration, he had the honour to offer a few remarks on the alterations made by the Select Committee. Those were all stated at length in the report of the Committee, and there were very few of them which called for any observation on his part. With reference to section 12, the Committee had adopted the proposal made by his Hon'ble friend Mr. Maine, and had arranged that the appointment of a Joint Judge, when once sanctioned, should remain valid, and that the Government of Bombay might remove such Judge from one district to another so long as that sanction remained in force. MR. SHAW STEWART had a small verbal amendment to propose which would make the intention clearer.

As regards the twenty-second section, he was glad to say that the Committee had adopted the recommendation of the Government of Bombay, and had retained the power of appointing Subordinate Judges in that Government. He entirely concurred in the opinion of the Hon'ble Sir Richard Temple, and thought that the power was one which ought to remain vested in the Government, and that it was not a power which ought to be entirely made over to the High Court. MR. SHAW STEWART agreed also with the opinion of the Bombay High Court of 1864, as opposed to that of the present High Court, and he was very glad that the Committee had recommended that the Bill should remain in this form. The power of prescribing tests of qualification for the office of Subordinate Judge was vested in the High Court, and certainly gave that Court a very considerable control over the admission of candidates, and that, he thought, was quite sufficient for the purpose.

The Bombay Government had acceded to the suggestion of the Committee that all appeals from the decisions of Subordinate and Assistant Judges in suits the subject-matter of which exceeded rupees 5,000 in amount, should lie direct to the High Court. That was the law in Bengal, and he felt assured that the appeal on the facts in cases of that amount should lie to the highest possible Court. After some demur the Bombay Government had at length acceded to the view of the Select Committee, and it had been carried out in the Bill.

The Bombay Government had also, with reference to section 24 of the Bill, acceded to the suggestion that Subordinate Judges of the First Class should try cases without any pecuniary limit as to amount. They had at first proposed a limit of rupees 10,000, but when the strong opinion of the Committee was represented to the Government of Bombay, they had acceded to the alteration recommended. Subordinate Judges of the First Class, it was now hoped, would be of a character quite competent to deal with any cases brought before them.

With reference to the tenth paragraph of the report of the Select Committee, he thought it scarcely necessary to state the reasons which had led the Committee to reject those three sections of the draft Bill which the High Court desired the retention of, but which the Government considered unnecessary and obsolete: the subject was carefully considered, and the Committee agreed to strike those sections out of the Bill.

Since the Bill was published, it was represented by one of the Native newspapers at Bombay that an important omission had been made by which certain provisions of the Bombay Regulations which forbade the interference of the Civil Courts in caste questions had been repealed, and they asked if the Bombay Government was prepared to let the Civil Courts of that Presidency interfere in caste questions. The Government thereupon telegraphed to MR. SHAW STEWART that that section of the old Regulations should be saved, and it had therefore been exempted from appeal.

He thought that he had now noticed all the important alterations in the law which had been made.

The Hon'ble MR. MAINE said that, when the Bill was before the Council the last time, he had expressed certain difficulties which he felt as to the disposal of patronage relating to Subordinate Judges. He had reason to believe that the Bombay Government had done him the honour to consider his argument, but that it remained of the same opinion. Under those circumstances, the Bill

being essentially a Bombay measure, which, upon principle, should have come before the Local Council, MR. MAINE would not press his objection further.

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART said the first amendment to which he would refer was that in section 38. This amendment was not included in the draft Bill prepared by the Select Committee, because at the time they made their report, the final instructions of the Government of Bombay had not been received. He might mention that, in the Bengal Act passed last year, Subordinate Judges were vested with the power of appointing and nominating all ministerial officers in their Courts, subject to the approval of the District Judge. He had represented to the Bombay Government that it was the opinion of the Committee that, as the position of the Subordinate Judges was about to be materially improved, that power ought to be conceded to them; and the Government had so far conceded as to allow Subordinate Judges to appoint such ministerial officers of their Courts whose salaries did not exceed ten rupees per month, and to give them the power of fining, suspending or dismissing any ministerial officer who was guilty of any misconduct or neglect in the performance of his duties. He was very glad that the Bombay Government had made that concession, and he would therefore move :—

1. That, in section 38, the word "fined" be inserted before the word "suspended" in line 3.

2. That the following clauses be added to the same section —

"Provided that the Judge of every Subordinate Court may, subject to the like rules, appoint the ministerial officers of such Court, whose salaries do not exceed rupees ten per mensem, and may by order fine, suspend or dismiss any ministerial officer of such Court who is guilty of any misconduct or neglect in the performance of the duties of his office. Every such order shall be subject to appeal to the District Judge; and the rules for the time being applicable to appeals to the Court of Session from orders of the Criminal Courts subordinate thereto, shall apply to all appeals under this section.

Nothing in this section shall exempt the offender from any penal or other consequences to which he may be liable under any other law in force for the time being."

The Motion was put and agreed to.

The Hon'ble MR. SHAW STEWART then moved the following verbal amendments which had occurred to some Members of the Committee since the report had been presented :—

1. That in section 1, for the words "to Sind or any other of such territories," the following be substituted, "to any other of the territories under such Government in which the said Code is not in force, or to Sind."

2. That in section 12, clause 2, line 5, after the word "force," the following words be inserted, "appoint a successor to such Joint Judge in case his office becomes vacant, or"

3. That, in section 19, clause 1, for "the limits of which part may be determined and altered from time to time by such notification," the following be substituted, "and may by like notification from time to time determine and alter the limits of such part."

4. That in section 41, for "Court of Civil Justice," the words "Civil Court" be substituted.

The Motion was put and agreed to.

The Hon'ble Mr. Shaw Stewart also moved the following amendment in section 40 :—

That in section 40, line 2, for the words "with the previous sanction," the following be substituted, "under the general control"

The Bombay Government, by section 40, desired to take the authority of appointing a clerk of the Court to any Civil Court, but they had omitted any mention of the necessity of the sanction of the Governor General of India in Council to such appointment. The Select Committee considered that that sanction should be required by the law, but by inadvertence, the expression "previous sanction" had been used, which would necessitate the previous sanction of the Governor General of India in Council to every appointment of a clerk of the Court : it was therefore found necessary to omit the words "previous sanction," and substitute the words "general control," which was consistent with the expression used in section 14.

The Motion was put and agreed to.

The Hon'ble Mr. Shaw Stewart then moved that the Bill, as amended by the Select Committee together with the amendments now adopted, be passed, and said that he had received that morning a telegram from the Government of Bombay, stating that all the alterations made by the Select Committee met with their approval.

The Motion was put and agreed to.

PRISONERS' TESTIMONY BILL.

The Hon'ble Mr. Cockerell said that, since the report of the Select Comtee on the Bill to provide facilities for obtaining the evidence of prisoners and for service of process upon them, had been presented to the Council, a rather important communication had been received from the Bombay Government in regard to the effect of section 2. He had hoped that the object of the Bombay

Government might be met by an amendment which he had prepared and included in a notice of amendments circulated; but he believed that his Hon'ble colleague on the Select Committee on this Bill was doubtful whether that object would be sufficiently attained by the amendment proposed.

MR. COCKERELL had also since received a communication from high authority containing several suggestions for further alterations in the Bill, which could be much more satisfactorily dealt with in Committee than by a series of amendments in Council. He would therefore propose that the Bill be recommitted, and that the Hon'ble Mr. Strachey be added to the Select Committee.

The Motion was put and agreed to.

EXPROPRIATION BILL.

The Hon'ble MR. STRACHEY introduced the Bill to consolidate and amend the law for the acquisition of land needed for works of public utility. He said that, when he asked leave to introduce the Bill three or four months ago, he explained the state of the existing law and the reasons for which legislation to amend it appeared necessary. He did not propose to trouble the Council again at any length with what he said before. The reasons for which an amendment of the law was necessary might really be summed up in a few words. They were, that the existing system by which the value of the land required for public purposes was determined by three arbitrators, whose award was absolutely final—for there was practically no appeal under any circumstances—had been found to lead to consequences which were altogether preposterous, and which often involved a waste of public money which was really scandalous. When he moved for leave to introduce the Bill, he gave a few illustrations of cases that had actually occurred in the Northern Provinces of India, and he thought he would not be taking up the time of the Council improperly if he repeated some of the main facts of one of those cases, for it really showed better than any argument could show the real necessity of an alteration of the law. One of the cases to which he had referred occurred not long ago in one of the stations in Northern India. A piece of land required for a public purpose, which the owner himself had distinctly declared was almost valueless, and which the Collector had valued at rupees 75, was declared by the award of the arbitrators to be worth rupees 47,400. For another piece of ground belonging to the same owner, for which the owner had asked rupees 24,000, the arbitrators awarded rupees 30,200. For the loss of leases, for which the owner had asked rupees 7000, the arbitrators awarded him rupees 71,200. In this case, if the Government had paid every farthing which the owner himself had ever asked the authorities to pay, he would have received rupees 31,000;

whilst the arbitrators awarded him rupees 1,01,400. The arbitrators refused to give any reason for the award they had made, and the Government was obliged to pay the sum awarded. A reference on the subject was made to the Advocate General, who gave it as his opinion that the public money had been absolutely thrown away, but he said that, in the existing state of the law, there was no remedy.

In another case the Advocate General had strongly urged a total change in the law, and said that the law in its practical working had led to something like robbery of the public money. Really no language could be too strong for the occasion: and MR. STRACHEY thought he might say that no one could defend the existing law or deny the necessity of its amendment.

The principles borne in mind in framing the proposed Bill were that, while every possible protection ought to be given to private rights of property, and while there ought to be no room even for suspicion that the Government could exercise any arbitrary power which would enable it to infringe the just rights of individuals, at the same time an independent and impartial tribunal ought to be constituted for the settlement of all disputed questions as to the value of property required to be taken for public purposes. The Bill proposed to entrust to selected Judicial Officers the duty of determining all questions which arose between the owner and the Government. If the Collector and the persons interested agreed as to the amount to be paid, there would of course be no difficulty; but if the parties did not agree, the matter would be referred to the determination of a Judge. It was proposed that the Court should, in the first instance, cause a notice to be served on all persons interested in the land, requiring them to state the sum which they were willing to accept, and whether they would prefer that the matter should be determined by the Judge alone, or by the Judge with the assistance of assessors. If the parties determined to leave the matter to the determination of the Judge alone, the Judge would decide the question, and his decision would be final; but if the parties preferred that the case should be heard by the Judge with the assistance of assessors, each party would nominate an assessor; the two assessors would then nominate a third assessor, and the Judge and the assessors would proceed in open Court to determine the amount to be paid for the land. If the assessors and the Judge differed as to the amount of compensation that was properly payable, the Judge's decision would prevail if he agreed (but only then) with the majority of the assessors; but if the Judge differed from the majority, an appeal would lie to the High Court, whose decision would be final. MR. STRACHEY thought that, by a system of that kind, all the advantages of the

system actually in force would be preserved. If the parties desired that their interests should be protected by the presence of assessors, that would be done; but instead of being altogether irresponsible as they now were, the assessors would deliberate and act in consultation with the Judge, and the whole of the proceedings would go on in open Court. Instead of the system under which no reasons whatever were assigned for any conclusions, however extraordinary, we should have the great advantage of publicity, and when the valuation of property was made, all parties interested would know exactly the grounds of the determination arrived at. In cases of real difficulty and dispute the High Court would be the ultimate Judge—a tribunal in whose perfect independence he need not say that every section of the public had at all times absolute confidence.

It remained—and this was really the most important part of the Bill—to declare, as far as practicable, the general principles by which the Courts were to be guided in making valuations of property in disputed cases. Those principles were laid down in sections 46 to 48 of the Bill. With His Excellency the President's permission, MR. STRACHEY would read those sections to the Council, as they distinctly explained the principles laid down :—

"46. In determining the amount of compensation to be awarded for property acquired under this Act, the Judge alone, or the Judge and assessors (as the case may be) shall take into consideration—

First, the price which the property would be likely to fetch if sold then and there by public auction ;

Secondly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of severing such property from his other property ; and

Thirdly, the damage (if any) sustained by the person interested, at the time of awarding compensation, by reason of the acquisition injuriously affecting his other property, whether moveable or immoveable, in any other manner, or his earnings.

"47. But the Judge or assessors shall not take into consideration—

First, the degree of urgency which has led to the acquisition;

Secondly, any disinclination of the person interested to part with the property acquired;

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

Fourthly, any damage which, after the time of awarding compensation, is likely to be caused by, or in consequence of, the execution of the proposed work;

Fifthly, any increase to the value of the property acquired likely to accrue from the execution of the proposed work thereon, or which would be likely to accrue to such value if the work were executed on any other property; or

Sixthly, any outlay or improvements on the property acquired, made, commenced, or effected with the intention of enhancing the compensation to be awarded therefor under this Act.

"48. When the person interested has made a claim to compensation, pursuant to the notice mentioned in section ten, the amount awarded shall not in his case exceed the amount so claimed, or be less than the amount tendered by the Collector under section twelve.

Where the person interested has refused to make such claim, or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded may be less than, and shall in no case exceed, the amount so tendered.

Where the person interested has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded shall not be less than, and may exceed, the amount so tendered."

He thought there was no doubt that the great abuses which had occurred in the application of the present law had arisen, not so much from any deliberate fraud (although he was afraid there had been a good deal of that too), as from the absence of any distinct statement of the principles on which cases of this kind ought to be disposed of. Some of the principles which had been laid down in the sections which he had just read were so very obvious that really it might seem hardly necessary to put them into the law; but it had been observed from actual experience that they were absolutely necessary. There were other principles which would no doubt require very careful consideration. They appeared to him to be fair as they stood, but he was very far from asserting it as his own opinion, and still less on behalf of the Government, that they were not susceptible of improvement and alteration. The questions involved were very difficult and important questions, and he thought they could not be too carefully considered. He did not now propose to ask the assent of the Council to any of the principles laid down in the Bill, nor did he propose now to ask that the Bill should be referred to a Select Committee. All that he now proposed was that the Bill should be published, in the hope that we might thus obtain the benefit of the fullest public criticism, and also with the object of obtaining the views of the various Local Governments and Administrations and of their most experienced officers on the subject. He wished to repeat what he had said on a former occasion that in this matter the Executive Government had really no interest whatever other than the interests of the public; it had no wish to receive any powers of any kind beyond those which it exercised under the existing law. In consequence of the necessity of meeting pressing public demands, it became sometimes necessary to interfere with private rights of property, but he need hardly say that the Government ought to desire, not only that those rights

should be most completely protected against every sort of arbitrary proceeding, but that the law, if it erred, should rather err in the direction of being too tender and too considerate to private interests, than in the opposite direction.

When he asked for leave to introduce the Bill some months ago, he had hoped that it might be possible to proceed at once with the work of legislating on the subject, for the work was really very urgent; but pressure of other public business had unfortunately caused delay in the introduction of the Bill. This was much to be regretted, for it could not be denied that the mere fact of a Bill of this kind being under the consideration of the Council had a strong tendency to retard the construction of many works of public utility throughout the country. But this, although very unfortunate, was really unavoidable. He only wished further to repeat what he had said before, and on which he had laid great stress, that the Government attached great importance to obtaining the greatest possible amount of public criticism on this Bill. The Bill was one which obviously demanded the fullest consideration and discussion, and it would not be right to think of passing such a measure until the Council had before it the most complete information and the best opinions that could be obtained.

The Hon'ble SIR RICHARD TEMPLE said, as the object with which this Bill was introduced apparently demanded it, he trusted he might be permitted to make a few very brief observations on the subject. Beyond doubt there had been a great amount of public money wasted in the manner explained by his Hon'ble friend Mr. Strachey. The importance of that waste might be clearly understood by any one who would take the trouble to consult the financial statements annually submitted to this Council, which showed that hundreds of thousands of pounds sterling had been and still were being paid for land taken up by the State for railway purposes.

Lands for railway purposes were given to the Railway Companies almost free of cost, or at a very little cost, in the interior of the country. The real cost was when the railway approached larger central stations, and it was owing to this great abuse in the awarding of compensation for lands taken for public purposes that the cost of land for railways became so high. He himself could corroborate the Hon'ble Mr. Strachey in all that he had said regarding the flagrant cases brought to notice. He had known similar cases in provinces of which he had conducted the administration. He could also corroborate what had been said to the effect that the mischief had been caused, not by the fraudulent conduct or gross neglect on the part of the arbi-

trators, but from the want of any express definition of the principles on which the valuations should be made.. For the Council would see that land entirely unproductive would suddenly acquire a high value as a railway approached the neighbourhood; and the arbitrators were called on to decide on the value of the land at the very moment when the property was undergoing a rapid and violent transition, and unless some fixed principles of valuation were laid down, it was quite impossible that the arbitrators could come to any proper conclusion. Unless, therefore, some proper check were imposed, and unless some intelligible and fair principles were laid down for the guidance of the arbitrators, it would be quite impossible to prevent that waste of public money, flagrant instances of which had been given to the Council. He was sanguine that, under a better system for ascertaining the amount of compensation to be paid for lands needed for public purposes, a fair decision would be arrived at, and there would not be so gross a waste of public money as had occurred under the existing mode of arbitration.

The Hon'ble MR. COWIE said, he would venture, with His Excellency's permission, to express a hope that this Bill would not be proceeded with until the Council resumed its sittings again in Calcutta. The Bill was a very important one, and he thought the subject should be well considered by the Council at large before it came up for passing.

The Hon'ble MR. STRACHEY said that, with reference to what had fallen from the Hon'ble Mr. Cowie, he would, with His Excellency's permission, say that he did not think that the Council or the public were likely to suspect him of any desire to avoid that public criticism, on the importance of which he himself had just laid so much stress. But in regard to the future progress of legislation on this subject, he thought that on reflection his Hon'ble friend would see that it was impossible for him, on behalf of the Government, to give any such pledge as to the time at which this measure should be proceeded with as that which the Hon'ble Member appeared to desire. The advantages of discussing measures of great importance in full Council were obvious, and MR. STRACHEY was sure that they were not likely to be denied or forgotten by His Excellency's Government. But at the same time he thought it clear that it would be extremely objectionable if the Executive Government were to place on the legislative liberty of this Council any restrictions which were not contemplated by the law, and which would be opposed to the intentions declared by Parliament itself at the time when this Council was constituted.

GENERAL STAMP BILL.

The Hon'ble MR. COCKERELL said, in presenting the report of the Select Committee on the Bill for imposing Stamp duties on certain instruments, he had stated that, as the Bill had undergone very considerable alteration, it was the desire of the Committee that it should be published before it was further proceeded with. The Bill had since been published, but the publication had been so recent that for any practical purposes it was considered that that publication would be of no advantage if he were to move at this time that the Bill should be passed. It seemed desirable that the results of the publication of the Bill should be known; that the different Local Governments and public bodies should have time to say what they had to say on the alterations proposed by the Committee. He had little doubt himself, judging from the general tone of the communications in regard to the Bill as originally drawn which had been received, that the amended Bill would be generally approved of; but at the same time the object of the publication would be defeated were he (MR. COCKERELL) to proceed with the motion now before him. His only object in putting down that motion in the List of Business before the Council was to give an opportunity to any of his Hon'ble colleagues on the Select Committee who might wish to make any remarks in regard to the various alterations contained in the amended Bill. He thought, however, that as the Committee had been unanimous in the recommendations made, there would probably be very little to be said on the subject until sufficient time should have elapsed for the communication of suggestions or opinions from different quarters. He would therefore ask leave to postpone the motions which stood in the paper with regard to this Bill.

Leave was granted.

The Council adjourned *sine die*.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.

CALCUTTA,
The 19*th March* 1869.

Office Supdt. Govt Printing —No. 11831 L. C —24-3-69.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 12th May 1869.
The Council adjourned to Wednesday, the 19th May 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 12th May 1869.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 19th May 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *Presiding.*

His Excellency the Commander-in-Chief, K.C.B., G.C.S.I.
Major-General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble B. H. Ellis.
The Hon'ble F. R. Cockerell.

PRISONERS' TESTIMONY BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to provide facilities for obtaining the evidence and appearance of prisoners, and for service of process upon them.

The Hon'ble MR. COCKERELL also moved for leave to introduce a Bill to exclude the ordinary Civil Courts from the cognizance of suits relating to land in the Bhután Dvárs, and to legalize certain Rules for the settlement of the said territory. He said that in July 1866 the territory ceded by the Government of Bhután, and known as the Bhután Dvárs, was annexed, and attached to the Bengal Division of the Presidency of Fort William. Shortly afterwards the Code of Civil Procedure was extended to that territory, and thereupon the cognizance of all suits of a civil nature became vested in the ordinary Civil Courts having jurisdiction within the annexed tract of country. Experience had shown that in a newly-acquired territory where British administration had been preceded generally by bad government, and often, as in the case of Bhután, by a complete absence of any regularly-constituted Government, claims relating to interests in land, or in any way connected therewith, were not satisfactorily dealt with by the ordinary Civil Courts, governed and restricted as those Courts were by the rules of Civil Procedure in their adjudicature of all suits and matters coming before them.

For claims of this kind, whether with regard to the equitable interests of the persons concerned, or the interests of the State which, until the land revenue assessment of the newly-acquired territory was completed, might be said to be interwoven with those of claimants of any right or title in the land, needed to be determined by considerations of expediency and good policy, such as the Civil Courts in the exercise of their ordinary jurisdiction were precluded from entertaining.

Hence, in the case of such previous acquisitions of territory as the Punjab and Oudh, the operation of the Code of Civil Procedure was barred as regards claims to any interest in land pending the completion of the land revenue settlement of those provinces, and all claims of the nature referred to were adjudicated in the Court of the settlement officer.

Why this course was not adopted, as regards the territory ceded by Bhután at the time of its annexation, did not appear; but a case had recently occurred which showed conclusively that this measure ought to have been taken when the Code of Civil Procedure was introduced into the annexed province, and should certainly be no longer postponed.

It was, Mr. COCKERELL thought, unnecessary to state in this place the particulars of the case to which he referred, but he would read a passage from the High Court's judgment on it in appeal from the decision of the local Civil Court.

"No considerations of expediency can weigh with us, or can legally be entertained by us. We must treat the question as if it arose in one of the long-settled districts. Were the matter otherwise, we might possibly concur in the view taken by the Deputy Commissioner. It might have been well if

the plaintiff's case had, in the first instance, been differently treated by the Executive. But so far as this suit is concerned, it appears to me that the plaintiff proves his case. He did, in fact, get this maurusí jotdárí pattá from the Súbah, the British Government's officers recognised him and received rent from him, and the defendants have granted him kabúlyáts and attorned to him. Surely, then, as against these defendants, he is entitled to have their names removed from the registry, and to have his own placed upon it instead. Whether a pattá of this sort, granted by the Súbah on eve of flight, is one which really by itself gave the plaintiff a title to the position he claims is, as it seems to me, most doubtful. But that is not the question which we have to decide. The only question before us is whether, as regards these defendants who have acknowledged the title which the plaintiff sets up, he is entitled to a declaration that his title is good, and that his name, and not theirs, ought to appear on the register as jotdár."

Mr. COCKERELL submitted that the natural and reasonable inference to be deduced from this passage in the High Court's judgment was, that in that Court's opinion it would have been well that a case of this kind should not have come before it, because a satisfactory adjudication of such cases demanded the import of considerations which the ordinary Civil Courts could not legally apply. He had cited this case to show that, not only was the policy of this Bill in accordance with that previously adopted by the Legislature under similar circumstances, but that it had the approval of the chief of the ordinary Civil Courts whose jurisdiction it would exclude. The Bill therefore was designed to exclude the jurisdiction of the ordinary Civil Courts in regard to all claims relating to any title or interest in land, or in any way connceted therewith within the Bhután Dvárs, and to substitute therefor a special agency for the adjudication of such claims. It would contain in the form of a schedule annexed thereto a set of rules which had been prepared by the Government of Bengal for the guidance of the Courts to which the adjudication of all ciaims of the nature above indicated was to be assigned. The effect of those rules would be to supersede the Code of Civil Procedure so far as their provisions were inconsistent therewith.

Leave was granted.

The Council adjourned to Friday, the 5th June 1869.

WHITLEY STOKES,

Secy. to the Council of the
Govr. Genl. for making Laws and Regulations.

SIMLA,
The 19*th May* 1869.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla, on Friday, the 4th June 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *presiding.*

His Excellency the Commander-in-Chief, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble B. H. Ellis.

The Hon'ble F. R. Cockerell.

PRISONERS' TESTIMONY BILL.

The Hon'ble MR. COCKERELL moved that the Report of the Select Committee on the Bill to provide facilities for obtaining the evidence and appearance of prisoners, and for service of process upon them, be taken into consideration.

He said that this Bill was designed to cure a defect in the present state of the law by which the interests of persons concerned in civil suits, or in criminal cases, were liable to be seriously prejudiced.

As the law now stood, except within the limited area of the ordinary original civil jurisdiction of the High Courts at the Presidency Towns, the removal of a person confined in any jail in this country, for the purpose of giving evidence in a civil or criminal Court, was not compellable.

The difficulty threatened by this want of power in the Courts to enforce the bringing up of persons confined in any jail for the purpose of giving evidence before them, had been in great measure obviated by the voluntary action of the officers in charge of jails, who had generally been found ready to aid the administration of justice by complying with the requisition of the Courts for the removal of prisoners whose evidence was required in such Courts.

The state of the law was, however, none the less unsatisfactory; for, on the one hand, compliance with the requisition of the Court for the removal of a prisoner might at any time be refused. It appeared, indeed, from the communications which had been received on the subject of this Bill that, in the Madras Presidency, under the orders of those responsible for the management of jails, the removal of prisoners for the purpose of giving evidence in any civil Court had been absolutely prohibited; and in the Lower Provinces of Bengal, as had been stated to the Council at the time of the introduction of the Bill, the growing disinclination of officers in charge of jails to comply with the requisition of the civil Courts for the bringing up of prisoners to give evidence before such Courts, had led to the legislative action in this matter taken by the Council of the Lieutenant-Governor of Bengal. Moreover, this unwillingness on the part of officers in charge of jails to permit the removal of persons confined therein on the requisition of the Courts which had begun to show itself in some provinces, was likely to become more general, as it was the certain tendency of modern jail management to prevent as much as possible the extramural translation of persons confined therein for any purpose whatever.

On the other hand, there was this further objection to the present state of the law that the want of legal authority for the removal of persons confined in a jail for the purpose of giving evidence, entailed an increased responsibility upon the officer in charge of the jail who, in compliance with the requisition of the Court, permitted such removal. As regards the mass of persons confined in jails, *i. e.*, those undergoing imprisonment for criminal offences, the officer in charge of the jail being responsible to the Government only for their safe custody, the personal risk incurred by that officer in permitting a removal by which the safe custody of the prisoner is endangered, was perhaps merely nominal; but in the case of a civil prisoner who had been committed to jail at the suit of a private creditor, and during whose removal for the purpose of giving evidence in any Court the opportunity of escape had been taken, the personal responsibility to the creditor for such escape of the officer to whose custody the debtor had been consigned, would be unquestionable. MR. COCKERELL did not mean to say that the jailor, from whose custody a debtor escaped, was not in any case amenable to a civil suit by the creditor for the injury which the latter might have sustained through such escape; but it was clear that the officer's responsibility for the escape was enhanced by his having, without legal warrant, suffered the removal of the debtor from the proper place of incarceration, the facility for effecting an escape having resulted from such removal.

There could therefore be no question as to the fact of there being sufficient grounds for the proposed legislation. All the Local Governments had concurred

as to the necessity of this measure, and had expressed their general approval of the provisions of the Bill.

In dealing with the details of those provisions, the Select Committee had derived great assistance from the Minutes of the learned Chief Justice of the High Court at Calcutta on the subject of the Bill. In fact, most of the alterations of detail in the Bill, as amended by the Committee, had been made in accordance with the suggestions emanating from that high authority.

The Council would observe that, under the provisions of the original Bill, orders for the bringing up of prisoners when made by any subordinate Court required the confirmation of the District Judge, or the Court of Sessions, according as such order was made by a civil or criminal Court.

It appeared to the Committee that this condition as to countersignature would, from various causes, in the case of orders of removal made by criminal Courts, be found to work inconveniently, and that the power of making such orders without reference to other authority for confirmation, might unobjectionably be exercised by all criminal Courts not inferior to that of a Sub-Magistrate of the First Class. Generally, the subordinate criminal Courts were established at no great distance from the district jail, from which in most cases the prisoners required as witnesses would have to be brought: in such cases the removal was easily accomplished, and the discretionary power of ordering it without reference to other authority might well be conceded to Courts of that status.

In the case of orders of removal by subordinate civil Courts, the control contemplated by the original Bill should, the Committee thought, be retained: regard being had to the number of such Courts and the distance of the places at which they were established from the jails from which prisoners would have to be removed, such control could not properly be dispensed with. Sections three and four had therefore been so amended as to draw the distinction which it was thought desirable to maintain between the orders of subordinate criminal and civil Courts in this respect.

At the same time, the Committee were of opinion that it should be clearly understood that the procedure for the validation of an order of removal made by a subordinate civil Court, should be so guarded as not to admit of any argument as to the propriety of the order being raised before the Court by which it must be countersigned. It had been provided, therefore, that the proposed order of removal should be accompanied by a brief report of the circumstances which were held to justify the issue of the order, and that the Judge whose counter-

signature is required should dispose of the reference summarily on the perusal of such report. When the order was for the removal of a person confined in a jail situated in a district other than that within which the Court issuing such order was established, it had been provided that such order should be sent to the Magistrate of the District in which such jail was situate. This alteration of the original Bill had been made in view of the fact that the Magistrate was ordinarily more directly connected with the officer in charge of the jail, and therefore the more fitting medium of communication in such cases than the district Court.

Provision had been made for the detention of persons removed to give evidence in any Court at or near such Court until their attendance was formally dispensed with by the presiding officer of the Court. The Bill, as originally drawn, provided only for the conveyance of such persons to the Court in which their evidence was required, but left the responsibility for their subsequent disposal undetermined.

The power of excluding certain classes of prisoners from the operation of the provisions of the Bill relating to removal, which was in the original Bill vested solely in the Local Governments, had been extended to the Governor General in Council. In the case of State prisoners, or persons who had been transported and are confined at the Andamans or elsewhere, it might be desirable that this power should be exercised by the Governor General.

The Code of Civil Procedure contemplated the taking of evidence by commission in cases only where the person whose evidence was required resided at a place more than one hundred miles distant from the place where his evidence was needed, and the Bill provided for the removal of a person confined in a jail situate not more than one hundred miles from the place where his attendance as a witness is called for. Cases, however, were readily conceivable in which, though the evidence of the person confined in a jail could not be absolutely dispensed with, his attendance to give evidence in Court was unnecessary. To meet such cases, provision had been made for taking the evidence of a person confined in a jail by commission, when such jail was more than ten miles distant from the place where the evidence was required.

The obligation of the officer in charge of a jail to transmit the process delivered to him, for the purpose of being served on any person confined in such jail, to any other person at the instance of the person so confined, had been made conditional on the cost of transmitting such process being furnished by the latter person.

So far MR. COCKERELL had confined his remarks to a brief description and explanation of the principal changes introduced into the Bill by the Select Committee up to the date of their first report. Subsequent to the presentation of that report, he had received certain important suggestions from high authorities which seemed to call for the reconsideration of some of the provisions of the Bill. He thereupon moved for and obtained the recommittal of the Bill, and the remaining points to which he had now to call the attention of the Council formed the subject of the Committee's second report.

The first of these related to the area of the operation of the Bill. At the time of its introduction he had explained that the High Courts had already the power of causing the removal under a writ of *habeas corpus ad testificandum* of persons confined in a jail situate within the local limits of their ordinary original civil jurisdiction. It was deemed therefore inexpedient to interfere in any way with this existing jurisdiction, and the area over which it extended was expressly excluded from the operation of the Bill as it stood at the time of the Committee's first report. It was pointed out that the effect of this restriction was to give the High Courts no power of ordering the bringing up before *themselves* of persons confined in any jail situate beyond the local limits above referred to, and it was certain that they had no such power under the existing law, although the Bill did empower them in certain cases to cause the removal of persons so confined for the purpose of giving evidence in Courts subordinate to such High Courts. Further, it was doubted whether the writs which the Courts could issue for the removal of persons confined within the abovementioned local limits, constituted a sufficient legal warrant for removing such persons to any place beyond those limits.

To remove all doubts as to the insufficiency of the existing law in this respect, and to give full power to the High Courts to cause alike the removal of persons confined in a jail situate beyond the local limits of their ordinary original civil jurisdiction for the purpose of giving evidence before themselves, and of persons confined within those limits to places situate beyond the same, section two of the Bill, as formerly amended, had been omitted, and the present section two (to which MR. COCKERELL proposed to make some further addition) substituted therefor.

The determination of the High Court's jurisdiction in these matters led to the consideration of a point of much importance which had been overlooked in the previous amendments of the Bill, *i. e.*, the territorial limits within which this power of removing prisoners, whether by the High Courts, or by the Courts

subordinate thereto, should be exercised. Under the Bill as first amended it was within the competency of a High Court to cause the removal of a person confined in a jail in any part of India for the purpose of giving evidence in a Court subordinate to such High Court, and similarly any principal civil Court, or a criminal Court not inferior to the Court of a Sub-Magistrate of the 1st Class subordinate to a High Court, could, without regard to territorial limits, *i. e.*, the limits over which the administration of the Local Government to which such Court was subordinate extended, order the removal of a person confined in a jail for the purpose of giving evidence in such Court, provided the jail was not more than one hundred miles distant from the place where the person's evidence was required. The Committee held such unrestricted power of removal as regards territorial limits undesirable, and the present provisions of the Bill had been adapted to the principle that it is inexpedient to allow the removal of a person confined in a jail situate within the territorial limits of one Local Government to give evidence in any civil matter pending in a Court subordinate to another Local Government.

In criminal matters the Committee held that the interests of justice might require occasionally the removal of a person confined in any jail, however distant from the place where his evidence was required, and the Bill, as now amended, contained a suitable provision for such exigencies. It was a principle of the Bill that, wherever a prisoner's personal attendance as a witness could not be provided for, his evidence should be obtainable by commission: still the Committee thought there should be some check upon the too indiscriminate and general issue of commissions: it was therefore provided that, where a commission had to be executed in any jail beyond the local limits of the appellate jurisdiction of the High Court to which the Court issuing such commission was subordinate, to validate the commission the previous sanction of such High Court to its issue would be necessary.

The position of the Recorders of Maulmain and Rangoon had necessitated some special provision to give them the needful jurisdiction for the purposes of this Bill. The local limits of their appellate and original jurisdiction were conterminous, and they were not in a judicial capacity subordinate to the Chief Commissioner of British Burma who, as regards so much of that province as lay beyond the local limits of the Recorder's jurisdiction, exercised the powers of a High Court, nor were they subordinate in the sense contemplated in the general provisions of the Bill to the High Court at Fort William. It followed that they would have acquired no power under the Bill, as previously amended, to cause the removal of any person confined in a jail situate beyond the local

limits of their jurisdiction. On the other hand, the Chief Commissioner of British Burma, whose powers of a High Court do not extend to the local limits of the jurisdiction of these Recorders, could not have caused the removal of any prisoner confined within those limits.

To obviate the difficulties which might have arisen out of these circumstances, the provisions contained in the last clauses of sections 7 and 8 of the Bill, as last amended, had been framed.

Lastly, exemption from liability to removal had been extended to the case of persons under confinement pending trial, and persons whose term of imprisonment would be likely to expire before they could be removed to the place where their evidence was required, and thereafter returned to the jail in which they were confined.

In the one case the removal might be attended with great public inconvenience, or be injurious to the interests of the persons under trial. It is true that the Bill as it now stood went somewhat beyond the object in view, enforcing, as it did, the disability for removal even where that removal might be allowed without detriment to public or private interests; but he (MR. COCKERELL) would presently move a slight amendment which would remove this objection. In the other case, *i. e.*, the case of persons whose unexpired term of imprisonment would appear at the time of the receipt, by the officer in charge of the jail in which they are confined, of the order for their removal, not to admit of such removal and return to the jail previous to the expiration of their sentence, such removal, if effected, would in fact operate as an extension of the term of their confinement and an encroachment on their right of liberty.

The Hon'ble MR. MAINE said that the measure would no doubt be useful. It introduced no new principle, but legalised an existing practice, and in effect extended to the whole of India the power of issuing a *habeas corpus ad testificandum* which was now confined to the Presidency Towns. There was only one point on which it was necessary to remark. It was of some interest to His Excellency the Commander-in-Chief and to his hon'ble and gallant friend, Sir Henry Durand. A doubt had occurred to his mind whether the new law would apply to military prisons. Until 1868, it was impossible for the Government of India to make any rules which would affect these prisons, for this would have been to affect the Mutiny Act. But now the new Mutiny Act, 31 Vic., cap. 14, sec. 20, had declared that it should be lawful for the Secretary of State for the War Department, "and in India for the Governor General in Council," to make regulations for such prisons. That did not, MR. MAINE thought, mean

the Governor General in Legislative Council, otherwise there would be the anomaly of coupling an executive officer like the Secretary of State for the War Department, with a non-executive body like the Council of the Governor General for making Laws and Regulations. The expression meant, in his opinion, the Governor General in his executive capacity, and in that capacity the Government of India would have to issue an order making the provisions of the Bill expressly applicable to military prisons.

The Hon'ble MR. ELLIS said that as he had not been present at the previous discussions, he was not sure whether he was in order in now suggesting any alterations in the details of the Bill, but he desired to make a few remarks in reference to section 3. The hon'ble Mover had said that the procedure adopted in that section for the Subordinate Magisterial Courts differed from that laid down for subordinate civil Courts, because the latter were generally at a greater distance than the former from the jails, whence the prisoners would have to be brought. Now this might be true of some parts of India, but it certainly was not the case in other parts of India, for there were districts in which many outlying Subordinate Magistrates' Courts were at a far greater distance than any of the subordinate civil Courts from the District Jails. He (MR. ELLIS) thought, therefore, that it was to be regretted that a procedure analogous to that adopted for the subordinate civil Courts had not been approved for Subordinate Magisterial Courts also. He would greatly prefer that the power of summoning convicts from jails should be given to all Subordinate Magisterial Courts, but subject to the approval of the District Magistrate, just as the summons of the subordinate civil Courts was subjected by the Bill to the approval of the District Judge. This check might often prevent the inconsiderate exercise of authority by a subordinate Court, and save expense to the State, much trouble to the Police, and some inconvenience to the public. He (MR. ELLIS) thought that an alteration, such as he suggested, might be made with advantage; but if its propriety were not concurred in by the hon'ble Mover and the Members generally, he did not wish at that stage of the proceedings to press it further.

The Hon'ble MR. MAINE said that notice of the proposed amendment would have to be given and circulated in the usual way, and if this were done, the Bill of course could not now be passed.

The Hon'ble MR. COCKERELL said that, in regard to what had fallen from the Hon'ble Mr. Ellis, he would explain that there were good grounds for not adopting the provision which that Hon'ble Member would desire to see

introduced. He (MR. COCKERELL) had perhaps not stated the case sufficiently in regard to the inexpediency of requiring the confirmation by a superior Court of orders for the removal of prisoners when made by a subordinate criminal Court. This confirmation, which was provided for in the Bill as originally drawn, was strongly objected to by the Chief Commissioner of British Burma; it was shown that in that Province, where the means of communication between the subordinate and superior criminal Courts was slow and uncertain, such a restriction on the validity of an order of removal when made by the subordinate criminal Court, was likely to create serious difficulties. It was perhaps mainly owing to this remonstrance that the original provision of the Bill in this respect had been departed from. He (MR. COCKERELL) thought the conclusion at which the Committee after a careful consideration of this subject had arrived, was a correct one, and he would be opposed to its reversal.

The Hon'ble MR. ELLIS then withdrew his proposed amendment.

The Hon'ble MR. COCKERELL then moved that for section 2 the following be substituted :—

Presidency Small Cause Courts.

Police Magistrates.

"2. For the purposes of this Act, the Courts of Small Causes established within the local limits of the ordinary original civil jurisdiction of the High Courts of Judicature at Fort William, Madras and Bombay, and the Courts of persons exercising the powers of a Magistrate of Police within the same limits, shall be deemed to be respectively subordinate to the said High Courts."

He said that the High Courts as in the case of the Small Cause Courts, so in that of the Police Magistrates, exercised no general control over the proceedings of those functionaries; and it was doubtful whether the latter could be held to be 'subordinate' to the High Courts in the sense of that term as used in the Bill: they clearly had no connection with the High Courts as regards the local limits of the appellate jurisdiction of those Courts. For the purposes of the Bill, therefore, it was necessary to make special provision for the subordination of the Courts of the Police Magistrates, as well as of the Small Cause Courts to the High Courts, otherwise the Police Magistrates would have no power of compelling the removal of persons confined in any jail beyond the local limits of their ordinary jurisdiction for the purpose of giving evidence before them.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL also moved the following amendments :—

"That in section 3, line 11, the word 'criminal' be inserted before 'court.'

That in section 4, line 10, the word 'civil' be inserted before 'court.' "

That in section 7, line 28, the words 'and sections three and four' be inserted after 'section.'

That to section 11 the following proviso be added :—

'Provided that the said officer shall not so abstain when the order has been made under section three,

and the person named in the order is confined under committal for trial, or under a remand pending trial or pending a preliminary investigation, and does not appear to be from sickness or other infirmity unfit to be removed,

and the place where his evidence is required is not more than five miles distant from the jail in which he is confined.'

"That in section 16, line 15, for 'it,' the words 'the said copy' be substituted."

The first, second and last of these amendments were intended to remove ambiguities which might be supposed to exist in the sections to which they respectively referred. The third was needed, as the subject of the clause referred to applied to sections 3 and 4 as well as to section 7. He had already, in his remarks on the details of the Bill, explained the necessity for the fourth amendment.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned to Friday, the 18th June 1869.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 4th June 1869.

Office of Supdt. Govt. Printing —No. 122 L. D.—11-11-73.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the Provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Simla on Friday, the 18th June 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*
His Excellency the COMMANDER-IN-CHIEF, K.C.B., G.C.S.I.
Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.
The Hon'ble H. SUMNER MAINE.
The Hon'ble JOHN STRACHEY.
The Hon'ble B. H. ELLIS.
The Hon'ble F. R. COCKERELL.

BHUTÁN DVÁRS BILL.

THE Hon'ble MR. COCKERELL said that the Bill was in form similar to Act No. XXVI of 1866—an enactment for legalizing certain rules made by the Chief Commissioner of Oudh relative to the determination of the interests of certain classes in land.

It provided for the exclusion of the jurisdiction of the ordinary Civil Courts in matters relating to land and the produce thereof within the tract of country known as the Bhután Dvárs, and transferred the adjudication of such matters to the Courts of the Officers specially appointed in that behalf by the Local Government to whose control the Bhután Dvárs territory was subject.

The Bill proposed to give the force of law to certain rules which had been prepared by that Local Government, and were set forth in the Schedule.

These rules purported to create a special form of procedure for the guidance of the Courts which were to be substituted for the ordinary Civil Courts in the adjudication of the matters referred to, and their practical effect would be to supersede, so far as they were inconsistent with its provisions, the Code of Civil Procedure which now governed the action of the Courts in the Bhután Dvárs.

When the Bill was referred to a Select Committee, there were two points which would need the Committee's special consideration.

Section 1 provided that the jurisdiction of the ordinary Civil Courts in all matters relating to land and the revenue or rent thereof should cease absolutely from the date on which the Bill became law, but no express provision was as yet made in regard to the disposal of pending suits or appeals, whether then instituted or about to be instituted, against the decisions passed in original suits by those Courts.

The necessity for the proposed legislation arose out of the conclusion that the cognizance of the suits and matters to which the Bill referred by the ordinary Civil Courts had already been attended with mischievous results; hence the policy of the Bill had as much application to pending suits and appeals as to suits that might be hereafter instituted, and it was thought that, unless the exclusion of the present Courts' jurisdiction were extended to such cases, the object of the Bill would be imperilled and liable to be defeated.

The other point was the duration of the proposed enactment. It was certainly not desirable to maintain the exceptional course of excluding the jurisdiction of the ordinary Courts in regard to any civil matters after the special object of that exclusion had been accomplished.

The authority most competent to determine when the operation of the Act should cease was the Lieutenant-Governor of Bengal, and the natural course would be to provide for its cessation on the duly published order of the Government of Bengal; but an obstacle to this mode of dealing with the question arose out of the relations between the Local Government and the High Court, which made it inexpedient that the jurisdiction of the latter should be in any way varied or affected by the order of the latter. It would probably be found necessary, therefore, to insert a provision similar to that contained in Act XVI of 1865—an enactment defining the jurisdiction of the Revenue Settlement Courts in Oudh—for determining the operation of the Act on the executive order of the Governor General in Council.

The Motion was put and agreed to.

The following Select Committee was named—On the Bill to exclude the ordinary Civil Courts from the cognizance of suits relating to land in the

Bhután Dvárs, and to legalize certain rules for the settlement of the said territory:—the Hon'ble Messrs. Maine, Ellis and the Mover.

The Council then adjourned to Friday, the 2nd July 1869.

WHITLEY STOKES,
Secy. to the Council of the
Govr. Genl. for making Laws and Regulations.

SIMLA,
The 18*th June* 1869.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Friday, the 2nd July 1869.

PRESENT:

HIS Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *presiding.*

His Excellency the Commander-in-Chief, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble B. H. Ellis.

The Hon'ble F. R. Cockerell.

BHUTÁN DVÁRS BILL.

The Hon'ble MR. COCKERELL presented the Report of the Select Committee on the Bill to exclude the ordinary Civil Courts from the cognizance of suits relating to land in the Bhután Dvárs, and to legalize certain Rules for the settlement of the said territory.

OPIUM TRANSHIPMENT BILL.

The Hon'ble MR. MAINE moved that the Hon'ble Messrs. Strachey, Ellis and Cockerell be added to the Select Committee on the Bill for imposing a transhipment fee on opium.

The Motion was put and agreed to.

PRESIDENCY SMALL CAUSE COURTS FUNDS BILL.

The Hon'ble MR. STRACHEY asked leave to postpone his motion for leave to introduce a Bill to transfer to Government certain funds belonging to the Courts of Small Causes in the Presidency Towns.

Leave was granted.

The Council then adjourned to the 16th July 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 2nd July 1869.

Government Central Press.—No. 53 L. D.—4-12 77.—50

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., Cap. 67.

The Council met at Simla on Friday, the 16th July 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *presiding*.

His Excellency the COMMANDER-IN-CHIEF, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

BHUTÁN DVÁRS BILL.

The Hon'ble MR. COCKERELL asked leave to postpone his motion that the Report of the Select Committee on the Bhután Dvárs Bill be taken into consideration.

Leave was granted.

CONSOLIDATED CUSTOMS ACT AMENDMENT BILL.

The Hon'ble MR. STRACHEY asked leave to introduce a Bill to shorten the time for landing dutiable goods. He said that section 52 of the Consolidated Customs Act (No. VI of 1863) provided that if the importer, owner or consignee of any goods (except as therein excepted), or his agent, should not land such goods within fifteen working days after the entry of the vessel importing the same, or within such further period as the bill of lading of such vessel should specify, the master or commander of the vessel, or the officers of customs on his application, might then carry such goods to the Custom House, there to be held (due notice having been given) subject to the lien for freight, primage and other charges to which they might be subject.

The Bengal Chamber of Commerce had repeatedly, during the last few months, represented that this provision caused much inconvenience.

"The operation of this clause," said they, "is found in practice to be often attended with the greatest inconvenience, because importers, who are anxious to receive their goods as soon as possible, cannot get delivery of them in consequence of consignees of cargo ready to be discharged not removing their packages as they come to hand; and if the Captain lands them before the expiration of fifteen days from date of ship's entry, he cannot have them held by the Custom House for freight and charges due thereon to the ship.

"This compulsory delay further entails a very serious addition to the heavy expenses ships coming to the port have to meet, any diminution of which would greatly benefit commerce."

The Government of Bengal took the same view and supported the representations of the Chamber of Commerce. It had also been urged on the Government of India that the matter was now of much greater urgency in consequence of the construction of new landing jetties, which it was expected would be open before long.

Under ordinary circumstances the Bill would not have been proceeded with till the Council had re-assembled in Calcutta, and it was now taken up only in consequence of the strong representations made by the Bengal Government.

Considering the varying circumstances of the ports of British India, it was thought expedient, instead of prescribing the same period for every port, to empower the several Local Governments, with the previous sanction of the Governor General in Council, to fix the number of days, not exceeding fifteen, within which goods might be landed.

It was right to mention that, although the merchants forming the Chamber of Commerce were strongly in favour of the proposed change in the law, another view was taken by the Calcutta Trades' Association. The opinion of the latter Body would no doubt be carefully considered by the Council.

The Motion was put and agreed to.

The Council adjourned to Friday, the 23rd July 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.

SIMLA,
The 16th July 1869.

Government Central Press.—No 565 L D —20-4-76 — 50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Friday, the 23rd July 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *presiding.*

His Excellency the COMMANDER-IN-CHIEF, G.C.S.I., K.C.B.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

VOLUNTEER ACT AMENDMENT BILL.

His Excellency SIR W. MANSFIELD moved for leave to introduce a Bill to amend the Volunteer Act No. XXIII of 1857. He said that the proposed alteration was merely a formal one, rendered necessary by the dissolution of the old local European Army. Under Act XXIII of 1857, section 1, the members of the Volunteer Corps in British India were subject to the Articles of War for the European officers and soldiers of the East India Company so far as those Articles were applicable to officers and consistent with the provisions of that Act. The object of the Bill, which he now asked leave to introduce, was simply to substitute for those obsolete Articles the Articles of War to which Her Majesty's Army was for the time being subject.

Leave was granted.

CONSOLIDATED CUSTOMS' ACT AMENDMENT BILL.

The Hon'ble MR. STRACHEY asked the President to suspend the rules for the conduct of business. The Bill was rather urgently required, but it had only been circulated for a week instead of for the fortnight required by the rules.

The PRESIDENT declared the rules suspended.

The Hon'ble MR. STRACHEY then introduced the Bill to shorten the time for landing dutiable goods, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said, that when on the occasion of their last meeting he had asked for leave to introduce the Bill, he had explained the reasons for the proposed legislation. The Bill was brought forward on the strong recommendation of the Government of Bengal, and in accordance with the request of the mercantile community of Calcutta. The merchants had represented the necessity of shortening the time prescribed by the Consolidated Customs' Act, section 52, after which the commanders of vessels might

land goods and deposit them in the Customs' House subject to the lien of freight and other charges to which they might be subject. The matter was one in which the Government of India had, as such, no interest at stake, and the Bill was merely intended to meet the wishes of the merchants of Calcutta. There was no information to show what were the wishes of the merchants at the other leading Indian ports, but the Bill was so framed that if it was found that no change was necessary in those ports the law there would not be altered. If, however, the same reasons for the proposed change existed there as in Calcutta, the Local Government would be empowered to reduce the time, subject to the approval of the Government of India.

BHUTÁN DVÁRS BILL.

The Hon'ble MR. COCKERELL moved that the report of the Select Committee on the Bhután Dvárs Bill be taken into consideration. He said that the Bill as amended by the Select Committee had met with the general approval of the Government of Bengal. Three amendments were proposed by the Select Committee. The first of these was contained in the second clause of the first section of the Bill as amended. It provided for the termination of the operation of the Act upon the published order of the Governor General in Council. As some objection had been taken to the form of this provision, and as it appeared on further consideration that its object would in effect be otherwise attainable, MR. COCKERELL would not ask the Council to adopt this amendment. The act of terminating the operation of an enactment virtually constituted the repeal of such enactment: it was a purely legislative function, and in the present case the object of delegating the exercise of such function to the Executive was to secure the restoration of the jurisdiction of the ordinary Civil Courts within the Bhután Dvárs as soon as the purpose of their temporary supersession had been attained and without the necessity of recourse to this Council for fresh legislation. The effect of the Bill, however, would be to place the Bhután Dvárs within the category of what were usually termed "Non-Regulation Provinces;" and as the Governor General in Council would shortly have power to legislate for such Provinces, on the recommendation of the Local Government, without the intervention of this Council, the proposed amendment might not inconveniently be dispensed with.

As to the second of the proposed amendments, MR. COCKERELL had drawn attention, at the time of introducing this Bill, to the provision by which, from the date of its coming into operation, the jurisdiction of the ordinary Civil Courts within the Bhután Dvárs, in regard to the particular subjects of litigation to which the Bill had reference, would absolutely cease, and he had explained the reason for not excepting from this change of jurisdiction suits which might have been commenced, but not decided, previous to the passing of this Act, or which were then pending in appeal, or in which an appeal against the decision of the Court by which the suit had been disposed of was still open to either of the parties. He had added that it would probably be found necessary to make some express provision for the disposal of such cases by the Courts which were to be substituted for the existing Civil Courts. Such a provision was contained

in section 4 of the amended Bill. By it the Lieutenant-Governor of Bengal was invested with the authority of determining by which of the new Courts original and appellate jurisdiction would be respectively exercised in regard to the transferred cases. And in order to avoid as much as possible the incurring of extra expense and trouble by the parties to such cases by reason of their transfer from one Court to another, it was also provided in this section that the transferred suits and appeals should be dealt with by the Courts to which they were removed, exactly as if they had been originally instituted in such Courts; that, in fact, the cases should proceed from the stage at which they had arrived in the Court from which they are removed, instead of being recommenced *de novo.*

The other addition to the original Bill was to be found in the new section 6, by which power was given to the Local Government to frame additional rules of procedure for the guidance of the new Courts, and such rules were declared to have the force of law.

The Schedule annexed to the Bill contained all that was at present thought necessary in this respect; but unforeseen doubts and difficulties might arise, which the Local Government should have the means of meeting and removing as far as might be practicable, without recourse to further legislation. The authority thus vested in the Local Government was limited by the usual proviso that the rules to be made under this section should not be inconsistent with the principle, or go beyond the scope, of the Act.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved that the Bill be passed with all the proposed amendments except that to which he had first referred.

The Motion was put and agreed to.

The following Select Committee was named on the Bill to shorten the time for landing dutiable goods:—The Hon'ble Messrs. Maine, Ellis, Cockerell, and the Mover.

The Council then adjourned to the 30th July.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 23rd July 1869.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., Cap. 67.

The Council met at Simla on Friday, the 30th July 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *presiding.*

His Excellency the COMMANDER-IN-CHIEF, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

ADMINISTRATION (HYDERABAD ASSIGNED DISTRICTS) BILL.

The Hon'ble MR. MAINE moved for leave to introduce a Bill to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts. He said that, at present, the estates of European British subjects dying in the Hyderabad Assigned Districts were administered by the Administrator General of Madras, but the Resident at Hyderabad had pointed out that, since the construction of the Indian Peninsular Railway, those Districts were practically nearer to Bombay than to Madras, and that, owing to the extension of cotton cultivation, the number of European British subjects in the Berars was likely to increase considerably. He accordingly proposed that for the purposes of administration to estates those Districts should be transferred to the Administrator General of Bombay. The point had been referred to the Governments of Madras and Bombay, and both had approved of the proposed alteration in the law. The Bill by a few lines would substitute, so far as regards the estates in question, the Administrator General of Bombay for the Administrator General of Madras. It was true that the Hyderabad Assigned Districts did not technically form part of British India, and were therefore not territorially within the powers of legislation conferred by the Indian Councils' Act. But by a recent Statute power was given to the Council of the Governor General for making Laws and Regulations to legislate for all British subjects (and therefore for the administration of their estates) within the dominions of allied Princes and States in India. The present Bill, if passed, would derive its validity from the Statute last referred to.

The Motion was put and agreed to.

CONSOLIDATED CUSTOMS ACT AMENDMENT BILL.

The Hon'ble MR. STRACHEY asked leave to postpone the presentation of the Report of the Select Committee on the Bill to shorten the time for landing dutiable goods.

Leave was granted.

The Council then adjourned to the 6th August 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 30th July 1869.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Friday, the 6th August 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*

His Excellency the COMMANDER-IN-CHIEF, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

VOLUNTEER ACT AMENDMENT BILL.

His Excellency the COMMANDER-IN-CHIEF introduced the Bill to amend Act No. XXIII of 1857 *(to provide for the good order and discipline of certain Volunteer Corps, and to invest them with certain powers).* He said that he had explained, when moving for leave to introduce the Bill, that it was one of a formal character, and was in point of fact merely to remove what had become an error in consequence of the change in the constitution of the British Army in this country. But though the Bill itself was formal, it related to institutions of a different character. His Excellency referred to the Volunteer Corps established in various parts of India. In Calcutta, for instance, the Volunteer Corps had appeared at one time to be near dissolution, but lately we had seen that, under their commanding officer, Colonel Walton, the corps had received a great development. At Karáchí and Nágpur, also, flourishing corps existed, but the latest instance of a real development of the system was the voluntary association of the employés of the East India Railway Company. His Excellency the Viceroy's sanction would have the effect of putting this new Volunteer Corps on a footing which would render it an example and a model to the corps which he (THE COMMANDER-IN-CHIEF) hoped would in time be formed in connection with all the other Indian Railways. The Bill was of so formal and simple a character that he did not propose to move that it should be referred to a Select Committee, but it would as usual be published in the *Gazette.*

CONSOLIDATED CUSTOMS' ACT AMENDMENT BILL.

The Hon'ble MR. STRACHEY presented the Report of the Select Committee on the Bill to shorten the time for landing dutiable goods.

The Council then adjourned to Wednesday, the 11th August.

WHITLEY STOKES,

Secretary to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 6th August 1869.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Wednesday, the 11th August 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *presiding.*

His Excellency the COMMANDER-IN-CHIEF, K.C.B, G.C.S.I.

Major-General the Hon'ble SIR H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL

EUROPEAN VAGRANCY BILL.

The Hon'ble MR. MAINE moved that the Bill to provide against European Vagrancy be referred to a Select Committee with instructions to report thereon in three weeks. He said, "This Bill, though it was not referred to a Select Committee, was introduced into the Council of your Excellency's predecessor, in order that it might be published, and the feeling of the country as to its provisions might be elicited. The views of the Local Governments and other authorities were at the same time invited. The result of this appeal and enquiry is, that the measure has been very generally approved of. I have not observed any objection whatever to its principles, and none to its machinery as a whole, and, with one exception, there has been no objection to any material detail. Under these circumstances, as the general feeling on the subject and the views of the local authorities have been ascertained for some time, it is perhaps right that I should explain what are the difficulties which have led to the delay which has occurred in enacting a measure of which the urgency is universally recognised. The first of these difficulties arises from certain provisions of Statute 3 & 4 Wm. IV., c. 85. The 81st and succeeding sections regulate the terms upon which natural-born subjects of the Queen, other than officials and natives of the country, are to be admitted into British India; and their principle is that of dividing the territory which forms the British Indian Empire into two por-

tions,—territory acquired before the year 1800, and territory acquired afterwards. Into the first part of the territory of the British Indian Empire, European British subjects may enter freely and remain there: provided that at the port of debarkation they register the objects they had in view in coming to the country. Into the remaining British territory they are forbidden to enter without a license. The system was no doubt liberal as compared with that which preceded it, but singularly restrictive as compared with that now in force. Very few Englishmen now in India are perhaps aware that, as a matter of strict law, they cannot, unless in the service of Government, live without a license at such places as Rangoon, Poona, Lahore, Allahabad, or at any of the Himalayan Hill Stations, and that they must, when they land at Madras, Calcutta or Bombay, explain to some offcial the objects for which they come to India. Indeed, I am not sure that, when the station-master of Calcutta delivers a ticket for Allahabad to a non-official genleman unprovided with a license, he is not in strictness abetting an illegality. The system, however, appears to have been obsolete from the first. I cannot find that there ever was a registration of Europeans disembarking at Calcutta, nor can I discover that any of the Queen's natural natural-born subjects have ever been kept out of prohibited portions of British India, though there is one case on record of deportation from Nagpore. However the sections exists in the Statute Book. They are quite inconsistent with the measure, and unless we can repeal them, the measure cannot become law. "Now, I should not think it worth while discussing the system of these sections as an alternative to the system of the Bill, if I had not seen it suggested in England that for the purpose of suppressing European Vagrancy, all that was necessary was to put the Charter Act in force, somewhat narrowing the area of the prohibited territory. I am wholly of a different opinion. The effect of such a system would be to let the vagrants wander freely in the provinces inhabited by the feebler and less masculine populations, while they would be kept from annoying the more vigorous races of Hindustan Proper. Possibly the presence of the vagrants among the races of Upper India may be the greater political evil and danger; but I fear that it is in such populations as those of Bengal Proper that they inflict the greatest suffering and wrong. I have been told, and no doubt my Hon'ble friend, MR. COCKERELL, will admit the possibility of the alleged fact, that two European vagrants have been known to go into a Bengálí village for the purpose of quartering themselves on the inhabitants, and the next morning the whole of the villagers were found to have fled into the jungle, men, women, and children, leaving their houses closed. But the conclusive objection to the system of the Charter Act is the existence of railways in India. Whatever territory is

forbidden to Europeans, it must always be territory in which there is a great central railway station—for example, Allahabad. Either then all passengers by railway must be allowed to enter the forbidden territory, which would be tantamount to having no system at all, or every body who takes a railway ticket must provide himself with a license from the State. In order, then, to pass this Bill, it was necessary to get these Provisions out of the way, and accordingly a section was inserted by the Secretary of State in the Governor General of India's Bill introduced into Parliament. This Bill has been cut down to very small proportions; but it appears from a telegram, which your Excellency sent me a few hours ago, that the Bill as passed contains a section which allows this Council to repeal the obstructive sections.

"The other class of legal difficulties arise upon certain sections of the Bill, which provide for the deportation of European vagrants. The difficulty here is a fruit of the imperfect power which this Council has of legislating for the sea. The sections were intended to compel the deportation of the vagrant. and at the same time to ensure to him kind treatment on the part of the ship-master. But this Council can only legislate for those parts of the sea which, under the Law of Nations, are considered to belong to the land—that is, a space of three miles from the shore, and the water of bays, estuaries, and indentations of the coast. It has no power to legislate for the high sea, except under certain provisions of the Merchant Shipping Acts; and though some of these provisions are so extremely wide and vague as perhaps to sustain the sections, still I think them on the whole of doubtful validity. The Secretary of State was asked by Lord Lawrence's Government to give us by further statutory enactment the necessary power; but he stated in a despatch that he thought there was no use in applying to Parliament for the purpose. I believe the true reason may be given by the statement that, at the very time when public opinion was roused in India to the great evils occasioned by vagrancy, there arose a panic of a similar kind in England. I propose, therefore, to omit these sections (which I may remark, are the only part of the Bill which has been seriously objected to), and, subject to what the Committee may decide, to substitute for the system proposed in them a system of voluntary agreement, the breach of which will be enforced by criminal penalties. Using popular language, I propose that when a vagrant or any person of European extraction has agreed in writing with the Government to be deported at the expense of the State, then if he refuses on notice given to go on board a particular ship and remain there, or if, having been actually deported, he returns to India within a certain limit of time, he will be subject to fine and imprisonment. The provisions compelling ship-owners to receive vagrants on board will also be omitted

"With reference to the phrase 'person of European extraction,' in the definition of vagrants, it seems to have been doubted whether that expression included Australians and Americans. I should have said that it obviously did; but, to prevent a doubt which I was not prepared for, I am quite willing, if the Select Committee thinks fit, to provide that persons of 'European extraction' shall include persons of American or Australian extraction. With regard to the definition of Magistrate, a question of importance is, whether Magistrates of all grades shall be entrusted with some of the powers conferred by the Bill. The provision was deliberately inserted to prevent the vagrants ever being out of reach of the arm of the law, but the point is one for the consideration of the Select Committee. An objection of the same kind has been taken in section 3 to the mention of the Superintendent of Police, and it has been doubted whether he is the proper person to give orders under that section, but that is a matter that persons who have more practical acquaintance with administration than I have, would be better able than I to decide. I would only say that the original Madras proposals specially included Superintendents of Police.

"I pass on to the 24th section, to which the Board of Trade has taken objection, though that Department is not supported by the Secretary of State for India. The Australian precedents, on which the section is founded, are said to be not deserving of much respect. This section imposes a penalty on the master of a ship who knowingly lands in any part of India an European who, in any part of Her Majesty's dominions, has committed an offence amounting to felony. I am for retaining the provision. I would readily omit it if India were a country in which an Englishman could hope to retrieve a lost character, but, from circumstances of climate and others, it is not so. It is not a country in which the tendencies which have developed themselves in a man that has been convicted of felony, are likely to be controlled. Has he committed a crime of violence? Why, one of the objects of the measure is to prevent violence to the natives. Has he committed a fraudulent crime? Every body knows that the largest number of situations open here to non-official Europeans are situations of confidence, and the temptations to abuse it are exceptionally great, as exemplified in the fact that the want of trustworthy agency is the great difficulty with which private enterprise has to struggle. I am, therefore, for keping out of India every body who has once been convicted of felony.

"As the Bill is eminently one for a Select Committee, I have no further observations to offer to the Council. The evil is great, perhaps greater than any with which we have had to deal of late years. European opinion and Native opinion are at one as to its magnitude, and as to the urgent necessity for putting an end.

to it. It must be some satisfaction to your Excellency and the Council, that they are also agreed that the proper means of abating it are to be found in this measure."

The Motion was put and agreed to.

CONSOLIDATED CUSTOMS' ACT AMENDMENT BILL.

The Hon'ble MR. STRACHEY, in moving that the report of the Select Committee on the Bill to shorten the time for landing cargo be taken into consideration, said that the Committee had proposed to make two slight alterations in the Bill. The first of these was in the title, which was originally not quite correct; the other, to cut out that clause which rendered it necessary that, when the Local Government had fixed a time within which cargo should be landed, the orders should receive the sanction of the Governor General in Council. Ordinarily, when provisions of this kind were inserted in the Acts of the Legislature, the object was to secure some uniformity of practice on the part of the various Local Governments; but in this case, there appeared to be no object of the kind. The time that ought to be allowed in different parts of India for landing cargo would depend upon the facilities that existed for unloading ships, and upon purely local circumstances, of which the Local Governments were the best judges, and in which there was no necessity for the Government of India to interfere. He had already explained that this Bill was not brought in for any purpose of the Government, but to meet the well-ascertained wishes of the mercantile community of Calcutta in a matter which affected their interests and convenience. He mentioned when he asked leave to introduce this Bill that the Trades Association of Calcutta, an important and influential body, had objected to the measure, and he said at the same time that he had no doubt that their objections would receive the full consideration of this Council. The Trades Association had represented that, in the present position of the port of Calcutta, cargo could not be landed very rapidly, and that if the time for landing were shortened, the result would be that goods would be removed from the ships by persons who had no interest in the condition of the goods, and that thus fragile articles would be more or less liable to damage.

The Association also anticipated that exorbitant demands for landing goods would be made on the part of those who had authority over the boats.

Although full consideration was due to the opinions of the Trades Association, the representations of the Chamber of Commerce and of the merchants of Calcutta must, he thought, be accepted as conclusive in regard of the opinions

of the general mercantile public. The Chamber of Commerce affirmed in a positive manner that not one-tenth of the goods annually imported into Calcutta was consigned to members of the Association, or passed through their agency, and the Chamber had a right to say that its opinion must be considered the more weighty of the two. We had heard nothing of the opinion of the Trades Association since the Bill was introduced, and it was possible that the successful construction of the new jetties in Calcutta might modify the objections formerly made.

In one of their former letters that the Association said that "the want of appliances for speedy delivery all tend to show the inadvisability of any reduction in the period now allowed. The Committee, in common with all importers, would only be too glad to support any plan which would ensure a more speedy delivery of cargo ; and if the facilities for landing cargo had been increased since the present rule came into force, the Committee would support the Chamber of Commerce in their request."

MR. STRACHEY thought, therefore, that as we had reason to hope that the facilities for landing cargo would be considerably increased before long, we might fairly anticipate that the objections formerly urged by the Trades Association would cease to be applicable.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY then moved that the Bill as amended be passed.

The Motion was put and agreed to.

GENERAL STAMP BILL.

The Hon'ble MR. COCKERELL moved that the report of the Select Committee on the Bill for imposing stamp-duties on certain instruments be taken into consideration. He said that the Bill purported to effect an entire reconstruction of the law relating to the stamp-duties chargeable on the execution of certain instruments.

The title of the proposed enactment had been criticized on the ground of its assumed technical incorrectness. It was argued that the term "General Stamp Act" was inaptly applied to an enactment which contained no reference to judicial stamps, and their exclusion from this measure was objected to as detrimental to public convenience. This objection rested on the assumption that the public were specially interested in finding in the same enactment the law regarding the stamp duties leviable on instruments, and the stamps used to denote the fees chargeable on the institution of suits.

If it could be supposed that even in the majority of cases, the execution of an instrument liable to stamp duty was necessarily to be followed by the institution of a suit in respect of the transaction effected by the instrument, there might be some weight in this objection: but obviously this was not the case even remotely. So far as the returns of stamp proceeds admitted of any distinct conclusion on this matter, it would appear that scarcely six per cent. of the transactions involving the execution of stamped instruments, became the subject of litigation.

Regarding the question of maintaining on general grounds in the same enactment the combination of stamp duties chargeable on instruments and stamps used to denote the Court fees levied in judicial proceedings, the inexpediency of such a course seemed to be unquestionable.

In the first place, there was this difficulty in the way of including these two subjects in the same legislative measure. The question of the rates of fees to be adopted in judicial proeeedings was not ripe for decision. The Government, with the information which it had before it at the time that this Bill was matured, was not then prepared either to confirm or set aside the rates fixed by Act XXVI of 1867, and the amendment of the law in regard to the stamp duties on instruments had long been urgently called for, and admitted of no further delay.

Apart from this consideration, however, the retention of the amalgamation was for other reasons undesirable, for what connection was there between the tax imposed on the execution of instruments and Court fees which would not, with equal consistency, bring within the scope of a general Stamp Act the regulation of Postal and Electric Telegraph rates, in both of which cases stamps were, to a large extent, employed as the most convenient collecting machinery?

There certainly seemed to be something anomalous in the practice of crediting in the public accounts Court fees when levied by means of stamps to stamp-revenue, and placing the same source of income, when realized by cash payments, under the head of "Law and Justice;" and this practice, which obtained up to the present time, was probably entirely owing to the former legislative amalgamation of two distinct branches of revenue.

To the same cause indirectly at least was attributable the fact that only by special enquiry could the proportions in which the stamp-revenue derived from those different sources contributed to its aggregate amount be even approximately ascertained; and he (MR. COCKERELL) ventured to say that if the separation which the Bill proposed to effect, had been maintained in past legislation, the Council

would have been in a better position to determine the rates of stamp duty which should be imposed on the instruments to which this Bill applied.

The re-construction of the stamp law embraced two important reforms. The main defect in the existing law was its general unintelligibility, arising out of the complete absence of any logical order in the arrangement of its provisions, and the ambiguous language in which many of its requirements were expressed.

The law, moreover, contained no definition or interpretation of the various terms by which the instruments thereby made chargeable with stamp duty, were designated; and the rates of *ad valorem* duty were so adjusted as to result in extreme inequality of taxation. The aim of the Bill, therefore, was first, so to arrange and express the provisions of the law as to popularize them, and make them more readily intelligible; and, secondly, to secure a more equitable incidence of taxation by a revision and equalization, as far as practicable, of the *ad valorem* duties.

It was believed that if the Bill became law, the first of these objects was likely to be fairly attained. The utmost possible publicity had been given to the proposed alterations of the law, and criticism had been thereby freely invoked. The result might be said to be a general *consensus* of opinion on the part of those who had most experience in the working of the law that these changes were calculated to effect a vast improvement in the desired direction. As regards the second object, the equalization of *ad valorem* duties, it would be seen that the amended Bill provided for a considerable reduction of the rates propounded in the original Bill in respect of bonds and conveyances of large amount. The scale of *ad valorem* duties contemplated by the original Bill was framed on the principle of the English law. It fixed the duty chargeable on any instrument at an uniform percentage of the amount of the transaction effected by such instrument, in substitution for the irregular sliding scale of the existing law. The effect of the proposed change was to reduce in a small degree the duty chargeable on instruments of an amount not exceeding Rs. 10,000, whilst on transactions of higher amount, the tax was more or less enhanced, in many cases to the extent of more than double the rates of the existing law.

The proposed enhancement had met with a strong protest from several quarters. It was represented that the declared objects of the revision of the stamp law comprehended no increase of existing rates, and it was asserted that this excessive enhancement of those rates on transactions of large amount was calculated to impede the transfer of property, and that, with the diminution of business caused thereby, the nett result of the change would be an absolute loss of revenue.

This conclusion was apparently based on the supposition that the stamp revenue depended mainly on the duties accruing from transactions of large amount; whereas the returns of stamp-sales showed a directly contrary state of things, and proved that the bulk of the revenue was derived from the duties leviable on transactions of very small amount. MR. COCKERELL had already referred to the difficulty, caused by the amalgamation of stamp-duties chargeable on instruments with judicial stamps, of ascertaining the proportions in which each contributed to the gross amount credited in the general accounts under the head of stamp-revenue. But this at least was certain that one-fourth of that revenue was derived from stamps of denominations not exceeding eight annas in value. Hence it was conceivable that a very slight abatement of the stamp duties at the lower end of the scale would produce a greater loss of revenue than would be compensated even by an excessive enhancement of the duties chargeable on transactions of large amount. And when it was considered that the plan of the original Bill provided for a small abatement of all duties charged on bonds and conveyances, and other instruments subject to similar rates up to Rs. 35 and Rs. 70 respectively, it was fairly maintainable that the scale fixed by the Bill as introduced into this Council, was not inconsistent with the declaration that the proposed revision of the stamp law included no design of securing any increase of the revenue.

The majority of the Select Committee, however, concurred in the views of the objectors as to the impolicy of the enhanced rates; and as the principle of an equal proportion of taxation according to the amount involved in the transactions without limit or restriction in regard to such amount, could only otherwise be maintained by a very serious reduction of rates at the lower end of the scale (a course which was altogether impracticable as involving a sacrifice which the revenue could not possibly afford) the retention of the sliding scale system, which governed the rates obtaining under the existing law, was recommended by the Committee, and assented to by the Government of India.

The rates of the principal *ad valorem* duties of the amended Bill were adjusted on this principle: they embraced the substitution of gradual ascents for the very irregular ascents of the existing law, and as compared with the rates fixed by that law were, in their individual incidence on the transaction effected by them, generally in favour of the tax-payer.

Another objection to the existing law was that it afforded no sufficient check to the fraudulent evasion of the stamp-duties imposed on the execution of instruments. The law certainly contained criminal penalties for such evasions, but provided no sufficient means of enforcing them, and as the necessary result they

proved in effect to a great extent inoperative. For the Collector, with whom alone rested the power of instituting a criminal prosecution, could only act when the unstamped instrument came into his hands, and no Court or public officer could impound any unstamped document for the purpose of facilitating a criminal prosecution of the executants of such document, however palpably fraudulent the omission to stamp it might appear.

The Bill gave this power of impounding unstamped or insufficiently stamped documents to all Courts and public officers, and it was thought that this power properly exercised by Registrars of Assurances ought to afford most valuable protection to the interests of the revenue. This provision of the original Bill had undergone no alteration by the Committee, and he only referred to it here for the purpose of stating that, in the opinion of the Committee, it went quite far enough in the direction of facilitating the detection and punishment of fraud, and that the further measure, the adoption of which was strongly pressed upon them, of allowing a criminal prosecution to be instituted on the information of any person as to the alleged possession of unstamped documents by some other person, could not be adopted without such risk of intolerable abuse, as it would be wrong to incur merely for the security of the revenue.

It had been suggested that the Civil Courts, which by the Bill, as by the existing law, were bound to take cognizance of unstamped or insufficiently stamped documents when produced in evidence, and to levy the extreme fiscal penalty incurred by their default, should be vested with the same discretionary power as could be exercised by the Collector in determining the amount of the penalty to be levied in such cases.

It had been asked also whether the admission of any instrument as not requiring a stamp, or being sufficiently stamped, by a Civil Court or Registrar of Assurances, or other public officer, was to be binding upon every other Court and public officer, and to preclude any question as to the sufficiency of the stamp being raised at any subsequent period?

The provisions of the Bill in regard to these matters were regulated by the consideration that, consistently with the due protection of the interests of the revenue, to the Revenue Authorities alone as directly responsible for the maintenance of those interests, could be assigned the power of foregoing any just claim, which the revenue might have or be thought to have in respect of any instrument.

The power of exacting less than the full penalty incurred on the default of any instrument, which virtually amounted to a power of remission of a portion of

such penalty was, therefore, advisedly allowed to be exercised by the Revenue Authorities only. The single exception to this rule was where a Civil Court had proceeded to adjudicate in the case of an instrument brought before it not bearing the proper stamp, and had levied what it deemed to be the extreme penalty incurred by the default of such instrument. In such case, the Court's adjudication was accepted as final to obviate undue annoyance to the individual holder of such instrument. But no such weight was accorded to the Court's expressed opinion that any instrument is not chargeable with stamp duty or additional stamp duty. Still less therefore obviously could it be the intention of the Bill that the ignorant or negligent omission either of a Civil Court to take cognizance of an improperly stamped instrument, or of a registering or other public officer to impound the same, should operate to save the validity of such instrument from being impugned on any occasion of its further production.

It was probably owing to a misconception of the above principle, which was a leading feature of the provisions of the Bill in regard to unstamped or insufficiently stamped instruments, that the general power of remission of penalties vested in the chief controlling Revenue Authority by section 43 of the amended Bill had been in some quarters objected to, as giving that authority a quasi-appellate jurisdiction over judicial tribunals.

That section properly construed did not involve the consequence thus assumed. For the due protection of the revenue, the law bound the Courts down to the enforcement of the penalties which it imposed. But in order to prevent undue hardship resulting therefrom in individual cases, it permitted the intervention of the Revenue Authorities, not for the purpose of questioning the correctness of the judicial award, with which they had no concern, but to admit of the mitigation of the punishment legally incurred by the default, where the special circumstances of the case might be held to justify such leniency, and the relaxation might be granted compatibly with a due regard to the general security of the revenue.

He now came to the details of the amendments proposed by the Select Committees, and it might be as well to state here that when citing the numbers of sections, he referred to the sections of the amended Bill as published in the *Gazette of India* of the 12th March 1869.

'Property' was defined to mean only property situate within British India for the purpose of excluding from the operation of the Act instruments relating to the transfer of property situated elsewhere, which had to be executed wholly or in part, within this country, because the parties, or at least some of the parties, happened to be resident in this country at the time of the execution.

The fourth clause of section 4 of the original Bill, by which instruments executed before the proposed law should come into force, but not brought to this country for the purpose of taking any action thereon until after it should begin to operate, were subjected to its provisions, had been omitted in the amended Bill, in consideration of the fact that instruments executed out of British India were, under the prevailing construction of the existing law, not liable to stamp-duty. It would, in the opinion of the Committee, be unreasonable to subject the transactions of persons to the operation of a law which, at the time at which such transactions took place, was not in existence, and by which consequently their conduct in regard to those transactions could not have been regulated.

The use of adhesive stamps was, by the amended Bill, restricted to those instruments to which they might be applied under the existing law and practice. The extension of such use contemplated by the original Bill. with a view to public convenience, was represented to be not desired by the mercantile community, which regarded the present mode of stamping as on the whole more conducive to general convenience. It was obviously, therefore, inexpedient that the revenue should incur the risk of loss from the greater evasion of duty which necessarily attached to the extended use of adhesive stamps.

Section 8 of the original Bill, by which it was proposed to make the first part of a set of bills of exchange bear the stamp required for denoting the full amount of duty chargeable on the set, had been omitted. The conditions which it was necessary for the security of the revenue to attach to this provision would, it was represented, have entailed great public inconvenience. The effect of the omission and the corresponding alteration of the schedule was to preserve the mode of stamping bills of exchange in force under the existing law.

Section 10 contained an entirely new provision for settling the amount of stamp-duty chargeable when the consideration stated in, or the sum secured by any instrument was expressed in a foreign currency. It was represented to the Committee that in this country, where the expression in a foreign currency of the amount involved in a certain class of instruments was of such frequent occurrence, the absence of any provision of this kind constantly gave rise to doubts as to the validity of such instruments.

To the list of exemptions in section 14, certain documents which enjoyed exemption from stamp-duty under the existing law, but were not included in the original Bill had been added, and the restriction in regard to amount of salary, placed upon the general exemption from stamp-duty of bonds executed by public officers for the due execution of the duties of their office, had been withdrawn.

Under the existing law, no instruments to which the Government was a party were liable to stamp duty, but by the Bill such instruments were exempted only when, under its other provisions, the obligation to bear the cost of such duty would rest upon the Government.

In the case of bonds, the person executing the instrument was required to pay the stamp duty, and consequently, but for the special exemption in their favour, bonds given by public servants for the due execution of the duties of their office, would be required to be stamped, and the cost of the stamp would fall upon them. It was thought that the contract entered into by a salaried officer for the due discharge of his duties stood on a very different footing from other contracts, and that it was inexpedient to burden him with a tax to which he had not heretofore been subjected.

The new section 15 comprised merely the substance of Act XVIII of 1865, which empowered the Governor General to reduce or remit stamp duties in certain cases. The provisions of that Act had been transferred to the Bill without alteration, and merely for the purpose of more convenient reference.

Section 16 had been introduced for the purpose of excluding bailbonds, personal recognizances, copies of proceedings granted by the Courts, and other documents, which were specially dealt with in the enactments relating to stamps used in judicial proceedings, from liability to the stamp-duties imposed by this Bill.

The penalty incurred by an unstamped or insufficiently stamped instrument produced within one year from the date of its execution, had been reduced from ten times the amount of the deficient duty—the limit of the original Bill—to five times that amount. It was thought that many cases might occur in which, though the grounds for an absolute remission of all penalty might be wanting, the defaulter would be entitled to some consideration, and the exaction of the higher penalty would be too severe.

The Committee proposed further that the maximum penalty to be exacted in any case of default should be one thousand rupees. That amount was sufficiently high to make wilful evasion of the proper duty unprofitable, and it was obviously not for the true interests of the revenue to make the penalties prohibitory, and a default practically irremediable in any case.

The High Court at Calcutta had by section 42 been made the Court of reference in respect of cases arising anywhere in India without the limits of the Presidencies of Madras and Bombay. To give additional weight to the rulings of the Courts in the referred cases, it was provided by the original Bill,

and the condition had been retained in the amended Bill, that these references should be heard by a Bench consisting of not less than three Judges. In Oudh, the Central Provinces, and British Burma, where the High Court was represented by a single Judge, this condition could not have been fulfilled, and some alteration was, therefore, necessary.

If the High Court of the North-Western Provinces and the Chief Court of the Punjab were to remain Courts of reference in these cases, as they would have been under the provisions of the original Bill, there would have been some difficulty in determining to which High Court cases arising in the Central Provinces and Oudh should be referred. Moreover, there was an obvious advantage in having as few Courts of reference in such cases as possible, as thereby the risk of conflicting decisions on important points was diminished.

It was not anticipated that these referred cases would be very numerous, and on the whole, therefore, the provision of the existing Bill was considered to effect the best practicable arrangement in this matter.

The power of framing rules for the sale of stamps and stamped papers was, by the amended section 49, made applicable to judicial stamps. This was a temporary provision, pending the more complete revision of the law regarding stamp fees in judicial proceedings, and was necessitated by the repeal of those sections of Act X of 1862, which related to the sale of stamped papers generally.

The number of schedules had been reduced from four to two, and a more general and simple classification of instruments adopted than that contained in the original Bill. The Committee, after a careful consideration of this matter, came to the conclusion that the only sound basis of classification was the amount of duty chargeable on any instrument, and that the Stamp duties were fairly susceptible of division into two classes only—one, duties of variable amount; the other, fixed duties.

In accordance with this view, all instruments, subject to an *ad valorem* duty, had been ranged in the first schedule, and all other instruments chargeable with fixed duties were placed in the second schedule.

The rates of duty on bills of exchange as now proposed involved no material modification of the existing law. The amended scale, as compared with that now in operation, showed a general reduction of rates, averaging about two annas, or one-eighth per cent. on bills for an amount below Rs. 1,500. The ascents were more gradual, and the steps more numerous in respect of bills for amounts ranging between Rs. 100 and Rs. 30,000; hence the average duty on bills between those amounts was slightly reduced. In respect of bills of amount exceeding Rs. 30,000, there was

no alteration of existing rates. The rates of stamp duty on bills of exchange were by these alterations fixed at an uniform percentage on the amount of the bill, and as compared with English rates showed an uniform excess of 25 per cent.

Under the present stamp law, bills drawn for a term exceeding one year were chargeable as bonds. It was proposed to discontinue this provision, and in conformity with the more recent English legislation on this subject, to make no distinction in the liability to duty between bills drawn for short or long terms.

Promissory notes, the liability of which under the existing law was somewhat ambiguously expressed, were subjected to the same rates, without exception, as bills of exchange.

The duty on marine, fire, and general policies of insurance had been reduced to one-half the present rate, and it was proposed to remit the duty on life policies altogether. These changes were recommended by the Committee as politic and expedient on general grounds, and in accordance with recent changes in the English law in the same direction. The entire revenue derived from the stamp duties levied on this class of instruments was too inconsiderable to make the loss of revenue which may result from the reduction worth taking into account.

The special rates, which amounted to only one-quarter of the rates charged on ordinary conveyances chargeable on transfer of shares by endorsement, have been extended to these transfers when effected by separate deed. This was in accordance with the provision of the existing law on this subject. It was represented to the Committee that the probable effect of the provision of the original Bill would be to render obsolete the practice of making transfers of shares by separate deed, a result which, on general considerations, was held to be undesirable, and that in that case the revenue would gain nothing by the restriction.

The rates chargeable on bonds, mortgages, conveyances and other instruments subject to similar *ad valorem* duties, had undergone very considerable reduction in respect of all instruments involving an amount exceeding Rs. 10,000. The *ad valorem* duties of the original Bill were, as he had before stated, adjusted on the principle of the English law, *i. e.*, the duty was assessed at an uniform rate of percentage on the maximum amount of each ascent.

This uniform rate was for bonds half per cent., and for conveyances one per cent.

The effect of the alterations made by the Committee was to retain the half per cent. and one per cent., respectively, when the amount of the bond or conveyance did not exceed Rs. 10,000 to reduce the half per cent. and one per cent. to

a quarter and half per cent. respectively when the amount of the instrument exceeded Rs. 10,000, but did not exceed Rs. 30,000, and to substitute for those rates one-eighth per cent. on the maximum amount of each ascent in the case of a bond or other instrument similarly chargeable, when the amount secured by the bond exceeded Rs. 30,000, and three-eighths per cent. on such maximum amount in the case of a conveyance or instrument, subject to like duty when the amount of the consideration stated in the conveyance exceeded Rs. 1,00,000.

It was thus proposed to reduce the duty on bonds where the amount involved exceeded Rs. 30,000 to one-fourth, and on conveyances when the consideration therein expressed exceeded Rs. 1,00,000, no less than one-half the amount contemplated by the original Bill, and to bring the rates chargeable on such instruments to an exact equality with the rates obtaining under the English law.

It was difficult to make any exact comparison between the rates of the amended Bill and those obtaining under the existing law, as the ascents in the scale of the latter were so abrupt and irregular. But generally it might be stated with certainty that the duties chargeable on these instruments had been more or less reduced throughout, and that this reduction had been proportionately more considerable in the case of bonds.

Directly, therefore, a certain loss of revenue, the approximate amount of which it was impossible to estimate, would seem to be the necessary result of this re-adjustment of the *ad valorem* duties. But MR. COCKERELL thought that there was some compensation to be looked for from other provisions of the Bill, by which ignorant and fraudulent evasions of the stamp-duty would be materially checked, and that the expectation that the nett result of the proposed change of the law would in time prove financially profitable, was not without foundation.

The other changes proposed by the Select Committee were of minor importance. The lower rates of duty applicable to short-term leases had been extended to leases the term of which did not exceed three years. This was a concession chiefly in favour of the tenants of houses, whose leases, in the Presidency towns at least, were ordinarily for a term of three years. It was thought that this class was too heavily taxed under the present system.

Instruments effecting the surrender of a lease, which were liable to certain stamp duties under the English law, were brought within the category of chargeable instruments, and made liable, as in England, to the same duty as leases up to a certain amount, and thereafter to the fixed duty of Rs. 16, which came near to the amount of the fixed duty imposed by the English law.

The duties chargeable on indemnity-bonds, bonds for the due execution of the duties of an office and instruments purporting to effect an assignment of any interest secured by bond or mortgage-deed, had been similarly adjusted in substitution for the unlimited *ad valorem* duties heretofore chargeable.

Following the course of the English law, it was proposed to substitute for the varying rates of duty chargeable on agreements a fixed rate of eight annas, and for the present *ad valorem* duty on counterparts of leases a fixed duty of one rupee. A low rate of duty which would be uniformly applicable to every description of agreement was calculated to prevent alike fraudulent and ignorant evasion of the requirements of the law, and the levy of an *ad valorem* duty on the counterpart of a lease when the lease itself had been already subjected to such duty, was clearly inconsistent with the principle of th Bill.

The special rate of eight annas was imposed on powers of attorney for the sole purpose of registering documents, as the act to be performed under such powers was very similar to the duty devolving on persons filing powers of attorney in judicial proceedings, and it seemed equitable that the duty chargeable in the one case should not exceed that which was levied under similar circumstances in the other.

Instruments relating to the appointment of trustees and the declaration of a trust had not hitherto been subjected to the duty imposed by the Bill. Such instruments were chargeable under the English law, and by the existing law in this country a conveyance of property from one set of trustees to another was taxed with the ordinary *ad valorem* duties applicable to conveyances.

Such charge was virtually discontinued by the provisions of the Bill in regard to conveyances; hence the instruments above referred to might unobjectionably be required to bear the fixed duty imposed by the Bill.

For the *ad valorem* duty on partition-deeds, a fixed duty of Rs. 16 was substituted. This change was suggested by the difficulty of estimating an *ad valorem* duty upon the miscellaneous descriptions of property which came within those instruments.

The insertion in this schedule of petitions for leave to file a specification involved no new impost. The duty borne by them was imposed by Act XV of 1859; and they had been transferred to this Bill in order that the entire law regarding stamp duties might be comprised in one enactment.

The imposition of stamp-duty on articles of clerkship was new. Those instruments had not hitherto been subjected to any duty in this country, though in Eng-

land they bore a much heavier duty than that now proposed. It was not expected that any material addition to the stamp revenue would accrue from this source, and the measure was proposed chiefly on the ground that, under the existing law, the mukhtárs practising in the Mofussil Courts and on the Appellate Side of the High Courts, who were taxed annually in an amount varying from Rs. 25 to Rs. 5, were placed at a disadvantage with their co-practitioners in the Courts at the Presidency towns, who were subject to no such professional tax. It had been urged by several respectable attorneys that the provision of the Bill in regard to this matter did not go far enough, that the articles of clerkship might, with advantage, be subjected to an additional duty of Rs. 250, and that the Bill should provide for the imposition of a further duty of Rs. 250 on the order of admission as an attorney.

The English law exacted a duty of £80 on the articles of clerkship, and £25 on the admission of the clerk to practise as an attorney.

The attorneys as a body no doubt regarded a high entrance fee in the form of duty as likely to afford some check upon the too indiscriminate enrolment of new members in the ranks of their profession. Considering, however, that hitherto no duty had been levied on these instruments, the proposed rate, which was necessarily of a tentative nature, appeared to be sufficient.

Such were the amendments which seemed to call for explanation, and MR. COCKERELL had only to add that the amended Bill had been unanimously adopted by the Select Committee, and that its provisions were the result of the most careful and protracted deliberations. The two hon'ble Members of this Council who represented the mercantile community of Calcutta cordially approved of the Bill, to the elaboration of the details of which they, as Members of the Select Committee, gave their earnest attention and most valuable assistance.

The Chamber of Commerce of Bombay, which body, MR. COCKERELL presumed, represented the chief commercial interests (and he drew attention to these circumstances, because a stamp law affected such interests in an especial degree) of that other leading mercantile centre, had since the publication of the amended Bill communicated its unreserved acquiescence in the propriety of the proposed changes of the law.

After the report of the Select Committee was presented in March last, the amended Bill was published in the official Gazettes, and special communications were addressed to the various Local Governments, inviting the opinions and suggestions of the whole administrative staff of the Empire. Replies to those communications had been received from every quarter. Some of them had led

to certain alterations of the details of the Bill, and to these he would have occasion to advert presently when moving the adoption of the amendments of which he had given notice. But the sonndness and expediency of the main provisions of the Bill might be said to have been generally assented to.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved the following amendments:—

That in section 1, the word and figures "January 1870" be substituted for "October 1869."

He observed that, as there were certain executive arrangements, which required some time for completion, as, for instance, the translation of the Act into the several vernacular languages, and its publication in that form, as well as the supply of a large number of stamps of new denominations, to be made before the Act could be properly worked, it was thought desirable to postpone its coming into operation until January next.

That in section 3, for the definition of "lease," the following be substituted:—

"'Lease' includes every instrument (not being a counterpart) by which one person lets or agrees to let, or takes or agrees to take, immoveable property to or from another."

He said that it had been represented that in many parts of the country a 'kabúliyat' given by the tenant was the only instrument executed on the letting of property. As the new law would admit of counterparts of leases passing with a mere nominal duty, it was thought that without the safeguard provided by the amendment, this kabúliyat, which in the cases refered to, constituted, the sole record of the lease granted by the proprietor, would escape the *ad valorem* duty which the law designed to impose on such transactions.

That in the definition of 'Notarial Act,' lines 1 and 4, the words 'endorsement, note or entry,' be inserted after 'instrument.'

This amendment, he said, was intended to show that, for example, the attestation of a power of attorney or any other instrument by a notary public was chargeable with stamp duty under the bill as a Notarial Act.

That in section 5, line 5, the word 'customs-bonds,' and in Schedule I, No. 8, the asterisk and the note to such number be omitted.

He said that the effect of these alterations was to exclude customs-bonds from the category of instruments to which adhesive stamps were applicable. It appeared that printed forms were now invariably used in the execution of these instruments, and that they were signed in the presence of the Collector of Customs. Measures were now being adopted by the Revenue Authorities for supplying these forms on stamped paper of the required value for sale to the public, whose convenience would, under these circumstances, be consulted if the stamp-duty chargeable on these instruments were required to be denoted by impressed stamps.

That in section 10, lines 5 and 8, the words 'or currency' be inserted after 'sterling.'

This addition, he said, was proposed on the representation of the Government of Bombay, that the amount of foreign bills drawn on Bombay coming from Ceylon and other places, was frequently expressed in 'pounds currency' instead of 'pounds sterling.'

That in section 12, line 2, after 'annuity' the words 'or other sum payable periodically' be inserted, and that in line 8 for 'payable,' the words or other sum payable periodically' be inserted, and that in lines 3 and 8 the word 'time' be substituted for 'period,' and that in the sixth and last lines, for 'annual payment' the words 'payment calculated for one year' be substituted.

This, he said, was a verbal addition to meet the very common case in this country of a periodical allowance, the term of which was expressed by the month or some other period, instead of by the year.

That to section 13, the following words be added :—

> "Provided that where the instruments are liable to different rates of duty under this Act, the instrument liable to the highest of such rates shall be deemed to be the principal instrument."

He observed that when two or more instruments were executed for the purpose of giving effect to any single transaction, and one of such instruments thereby became liable only to the small fixed duty chargeable on collateral instruments, the parties to such instruments were by section 13 allowed to determine for themselves, which should, for the purpose of computing the proper stamp duty required for either instrument, be deemed to be the principal instrument.

The proposed additional clause was intended to prevent the permission in such cases being used for evading payment of the higher rate of duty where the several instruments executed in respect of the single transaction were liable to different rates.

That after section 13, the following section be inserted :—

"14. An instrument so framed as to come within two or more of the definitions in section 3, shall, when the instruments to which those definitions apply are liable to different rates of duty under this Act, be charged with the highest of such rates :

Provided that when any one instrument purports, for distinct considerations, to convey by way of sale, to lease, to give, or to mortgage two or more subject-matters,

or to convey by way of sale, to lease, or to give one subject-matter, and to mortgage another,

such instrument shall be chargeable with the aggregate amount of the duties to which instruments effecting separately each of such conveyances, leases, gifts or mortgages would be liable under this Act."

He said that the original Bill contained a somewhat similar section which was left out of the amended Bill. The Select Committee rejected that section on the ground of its liability to misconstruction. Since the publication of the amended Bill it had been represented from more than one quarter that some such provision was required, and it was thought that the section now proposed, with the safeguard of the proviso attached to it, was calculated to meet the requirements of the case, without being open to the objection on the score of ambiguity which attached to the rejected section.

That to section 14, clause 1, the following words be added :—"or (in the Presidencies of Madras and Bombay) of inám lands."

He said that clause 1 provided for the exemption of receipts granted to the cultivators of revenue-paying lands. It had been represented that as the payments made by the holders of inám lands to the Government were not held to be revenue payments, the exemption would not apply to receipts granted by those persons, and yet that the principle of the exemption in the case of revenue-paying landholders was as applicable to their case. It was proposed therefore to extend the exemption to receipts given by inámdárs.

That in section 17, line 2, the words "under this Act" be omitted, and that in line 20, for "this Act," the words "the law in force in British India at the time of its execution" be substituted.

That in section 19, line 2, the words "under this Act" be omitted, and that in line 4, for "proper stamp," the words "stamp required by the law in force in British India at the time of its execution" be substituted.

That in section 21, line 7, for the words "prescribed by this Act" the words "required by the law in force in British India at the time of its execution" be substituted.

That in section 22, line 7, for the words "under this Act," the words "with stamp duty under the law in force in British India at the time of its execution" be substituted, and that in line 9, for 'this Act' the words 'that law' be substituted.

And that in section 23 (*a*), line 19, for the words "this Act," the words "the law relating to stamp duties in force in British India at the time of its execution" be substituted, and that in the last line of the same clause the words "under this Act" be omitted.

He remarked that the object of these verbal alterations was to include, within the provisions referred to, instruments executed before this Act came into operation.

That in section 24, clause (*a*), line 25, after 'and' the words 'subject to the provision contained in section 40' be inserted, and that to clause (*d*) of section 24, the same words be prefixed. That the same words also be inserted in section 25, line 11, after the word 'shall.'

These provisos, he said, related to the appellate jurisdiction conferred on the chief controlling Revenue Authority by section 40. It was necessary to declare that the effect of the Collector's certificate, as laid down in sections 24 and 25, was subject to the power of revision vested in the chief Revenue Authority.

That to section 25 the following clause be added:—"In case any instrument sent or returned under sections twenty-two, twenty-three, or twenty-four, or the former part of this section, be lost, destroyed or injured during transmission, the Court or officer sending, or returning the same shall not be liable for such loss, destruction or injury."

He observed that by sections 22 and 23, the Court and the registering officer were required in certain contingencies to send documents to the Collector, and by sections 24 and 25 the Collector was required to return such documents. It was necessary to protect the Court or public officer fulfilling this requirement from responsibility for any accident that might happen to the document in transit. A similar provision was made in the existing law to meet the case of loss or injury of documents sent by the Collector at the instance of the owner or holder of such

documents to the chief controlling Revenue Authority for determination of the stamp duty to which they were liable.

That in section 26, line 4, for "or any other instruments chargeable hereunder with duty not exceeding one anna comes to the hand of any person," the following be substituted:—"by any banker or person acting as a banker, chargeable hereunder with the duty of one anna, comes to his hands unstamped."

He said that the effect of this alteration was to exclude the 'other instrument chargeable with a duty of one anna' from the provision of the section. It would be observed that the last sentence of the section was wholly inapplicable to the case of the "other instrument." This would be rendered clearer by a reference to Schedule II, Nos. 2—8 which contained a description of the "other instrument" referred to. The fact was that those instruments which it was now proposed to exclude from the section ought never to have been brought within it, for the provision of the section was not applied to them under the existing law, or in the English statute from which the provision was taken. The alteration would bring the provision of the Bill into exact accordance with the English statute.

That in section 26, clause (*b*) underneath the 3rd line, the words "or firm," and in 4th line of same clause after the word "he," the words "or it" be inserted.

That in section 28, line 1, for "whoever makes signs, or issues," the words "any person or firm making, signing or issuing" be substituted, and that in lines 3, 4 and 5, for the words "accepts, endorses, transfers, pays or receives,' the words "accepting, endorsing, transferring, paying or receiving" be substituted, and that in line 10, for "whoever makes, executes, or signs," the words "any person making, executing, or signing" be substituted.

And that in section 29, for the words "whoever presents for acceptance or for payment, or accepts, pays or endorses, transfers or in any manner negociates," the following be substituted:—"any person or firm presenting for acceptance or for payment, or accepting, paying, endorsing, transferring or in any manner negociating."

And that in section 30, line 1, for "whoever presents," the words "any person or firm presenting" be substituted, and that in line 6 and 7, for "whoever endorses, transfers, or in any manner negociates," the following be substituted:—"any person or firm, endorsing, or in any manner negociating," and that in line 8, after "his" the words "or its" be inserted, and that in line 14, for "and whoever" the words "any person or firm who or which" be substituted, and that in lines 16 and 17, for "and refuses or neglects," the words "refusing or neglecting" be substituted.

And that in section 31, line 1, for "whoever draws or executes," the words "any person or firm drawing or executing" be substituted, and that in lines 6 and 7, for "does not at the same time draw or execute," the words "not at the same time drawing or executing" be substituted.

And that to section 37 the following clause be added:—

"In the case of a firm, the Magistrate imposing the fine may issue a warrant for the levy of the amount by distress and sale of any moveable property belonging to the firm, or to all or any of the members thereof."

He observed that these verbal alterations were designed to extend to a 'firm' the liability of a 'person' for offences against the stamp law. It had been represented that, in the Bombay Presidency, unstamped bills were frequently drawn and accepted in the name of Native firms by an agent acting on behalf of such firms; that as the indentity of the offending agent in such cases could not be established, a criminal prosecution was found to be impracticable, and that the stamp law was thus systematically evaded by certain classes with perfect impunity.

That section 33 be omitted (the numbers of the subsequent sections being altered), and that the following clause be added to section 32:—"Any person making or executing such instrument, and failing to cancel the stamp affixed thereto in manner aforesaid, shall for every such offence be liable to fine not exceeding one hundred rupees."

This alteration, he said, was merely intended to effect a better arrangement of the provisions of the law without any change of their subject-matter.

That section 40 be omitted (the numbers of the subsequent sections being altered), and that in section 41 the words "except such as are passed under section thirty-nine" be omitted.

He said, that the effect of this amendment was to restore to the chief Controlling Revenue Authority the final adjudication of doubts as to the proper stamp duty to which any instrument was liable. The Revenue Authority possessed this jurisdiction under the existing law. But the Bill proposed to transfer it to the High Court, in conformity with the English law, which gave an appellate jurisdiction in such matters to the Court of Exchequer.

It was doubted whether, even in England, such appeals, were often made, and whether the power of appeal to the Court was regarded as conferring any particular benefit on the public. It was thought that in this country the necessary expenses of an appeal to the High Court in such cases would prove deterrent, and that the

advantage of giving the power of such appeal was very doubtful. Moreover, a difficulty was anticipated from the different procedures enjoined by sections 40 and 42 as they stood.

It might happen that, in an appeal decided under section 40, some ruling on an important point was laid down by a single Judge of the High Court, and that on the same point arising in a case referred under section 42, the three Judges required to try such references would be unable to assent to the ruling, or to admit it as binding on their judgment. Obviously any conflicting rulings so brought about would be a very great evil, far more than counterbalancing the benefit of a right of appeal to High Court in such cases.

On the whole, therefore, it seemed better to let the appeals against the Collector's decision in adjudication go to the Authority invested with appellate jurisdiction in the case of all other orders by the Collector under the Stamp Law, and to trust to the power of reference provided by section 42, doing all that was needful for the proper adjudication of doubtful points.

That in section 41, line 1, after 'All' the words 'certificates and' be inserted and that the following proviso be added:—

"Provided that no order passed on such revision shall invalidate any registration or other proceeding previously made or taken upon an instrument endorsed by the Collector under section 24 or section 25."

This proviso, he said, was required to prevent a difficulty arising in cases where, on the strength of the certificate given by the Collector, some action might have been taken on the certified instrument previous to the interposition of the appellate authority.

That in section 44, lines 4 and 5, the words 'of the district' be omitted, and that in line 5, for "he" the words "the Local Government generally or the Collector" be substituted.

This addition, he said, was needed to give the Local Government the power of investing any officer other than the Collector or his delegate with authority to prosecute offenders against the Stamp Law. Such a power was given by the existing law.

That in section 46, for "who has obtained" the word "possessing" be substituted, that in line 2, after "paper" the words "which has been obtained" be inserted, and that in line 6, after 'duties' the words "or any paper on which the

stamp has been denoted by the Collector or Superintendent of Stamps" be inserted, and that in line 8, for "obtained" the word "possessed" be substituted.

That in section 47, line 1, after the word "paper" the words "or paper on which the stamp has been denoted by the Collector or Superintendent of Stamps" be inserted.

He said that, as section 46 stood in the amended Bill, the provisions in regard to refund for spoiled or useless stamped papers applied to impressed stamps only. But in the Presidency towns stamps of considerable value were affixed by the Collector, and these did not come within the category of impressed stamps. Persons who had paid for such stamps were clearly entitled to refund, in the event of any such accident or contingency as was contemplated by section 46 occurring in respect to them. The proposed verbal alterations would have the effect of making the refund-provisions applicable to such cases.

That to section 49 the following clause be added:—

"Any person appointed to sell such stamps and stamped paper, who knowingly disobeys any such rule, shall be punished with simple imprisonment for a term which may extend to six months, or with fine not exceeding five hundred rupees, or with both."

He said that the existing law contained various penalties for offences by stamp-vendors, which were wholly excluded from the Bill. It was thought that penalties prescribed by the rules to be made under section 49 might not be susceptible of enforcement under the legal power conferred by that section. A general clause laying down a maximum criminal penalty was therefore thought to be needed.

That for the first clause of section 50 the following be substitnted:—"When an impressed stamp is used under section 5 to denote the amount of duty with which any instrument is chargeable, such amount shall be denoted by a single stamp, except," &c.

This, he said, was a verbal alteration to adapt the provision of the section to that of section 5.

That in Schedule II the paragraph No. 28 be omitted, and that the numbers of the subsequent paragraphs be altered; and that in No. 14 the words "not chargeable under Schedule II, No. 28" be omitted.

He said that the conveyance of a right of redemption of mortgaged property which by the item of the schedule he now proposed to omit, was subjected to a small fixed duty, was considered to be equitably liable to the usual *ad valorem* duty chargeable on an ordinary conveyance, inasmuch as the property or interest in property covered by the instrument had not, by the original mortgage transaction, been already subjected to taxation. The considerations upon which a reconveyance of mortgaged property was made liable by the Bill to a mere nominal duty, did not apply to the case of the class of instruments to which this amendment referred.

That in Schedule I, No. 10, for the words "such amount" the words "the amount secured" be substituted, and that under line 3 the following be inserted :—

"11. Instrument of further charge on such property whether by indorsement or otherwise."

And that the numbers of the subsequent Articles be altered.

That in Schedule I, after No. 15, the following be inserted :—

"17. Instrument of further charge on such property whether by indorsement or otherwise."

And that the numbers of the subsequent Articles be altered.

These additions were, he said, designed to prevent a practice for evading the full duty chargeable on a mortgage deed, which might be resorted to in the absence of the proposed provision. A small amount might be stated to be secured by the mortgage, and a proportionately small *ad valorem* duty paid thereon: subsequent advances could be thereafter made by way of further charge on the same property, the instrument executed in connection therewith being stamped merely as an Agreement.

22. That in Schedule II, to paragraph No. 16, the following clause be added :—

"Provided that the counterpart shall not be available unles the Collector or such other officer as he may authorize in that behalf shall certify that the proper stamp-duty on the original instrument has been paid. Such certificate shall be endorsed on the counterpart on the same being produced together with the original instrument, and on the whole being duly executed and duly stamped in other respects."

This provision was, he said, in accordance with the English law, and secured that protection to the interests of the revenue necessitated by the reduction to

a small fixed duty of the *ad valorem* duty heretofore chargeable on counterparts of leases.

That in Schedule II, No. 32, the words from "when" to "adopted" be omitted.

He said that the effect of this amendment was to render all instruments purporting to confer an authority to adopt liable to the fixed duty of Rs. 8. The restriction contemplated by the amended Bill would render the clause inoperative, as there could be no certainty in regard to the condition which it imposed.

The Motions were put and agreed to.

The Hon'ble MR. ELLIS moved that in section 1, line 1, the word 'Documentary' be substituted for 'General.'

The Motion was put and lost.

The Hon'ble MR. COCKERELL then moved that the Bill as amended be passed,

The Hon'ble MR. MAINE said,—"Before your Excellency puts the question, may I be permitted to say that this measure has cost very great labour to all concerned in its preparation. It would have been impossible or very difficult for the Legislative Department to undertake it as part of its ordinary work without extraneous assistance. I think the acknowledgments of your Excellency's Government are due to my hon'ble friend, Mr. Cockerell, for the very great pains he has bestowed on the Bill, and for the sagacity with which he has arranged the vast mass of papers submitted to him. We are also much indebted to the mercantile members, Mr. Cowie, and Mr. Bullen who has now left India, for the help they gave us in adjusting the scale of duties."

The Motion was put and agreed to.

The following Select Committee was named on the Bill to provide against European vagrancy:—His Excellency the Commander-in-Chief, the Hon'ble Messrs. Strachey, Ellis, Cockerell, and the Mover.

The Council adjourned to Friday, the 13th August 1869.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

Govt. Central Press.—No. 568 L. D.—19-5-76.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Friday, the 13th August 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *presiding.*

His Excellency the Commander-in-Chief, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble H. Sumner Maine.

The Hon'ble John Strachey.

The Hon'ble B. H. Ellis.

The Hon'ble F. R. Cockerell.

ADMINISTRATION OF ESTATES (HYDERABAD ASSIGNED DISTRICTS) BILL.

The Hon'ble MR. MAINE introduced the Bill to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts, and moved that it be referred to a Select Committee with instructions to report thereon in one week. He said that a fortnight ago he had fully described the Bill, which was now introduced with the consent of the Governments of Madras and Bombay. It proposed to transfer, for the purposes of administering estates of deceased British subjects, the Hyderabad Assigned Districts from the Administrator of Madras to the Administrator General of Bombay, and it would effect this transfer by a simple alteration in the definitions of 'Presidency of Madras' and 'Presidency of Bombay' contained in the third section of the Administrator General's Act, 1867.

The Motion was put and agreed to.

The following Select Committee was named:—On the Bill to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts—the Hon'ble Mr. Cockerell and the Mover.

The Council then adjourned to Friday, the 20th August 1869.

WHITLEY STOKES,

Secretary to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 13th August 1869.

Government Central Press.—No. 54 L. D.—4-12-77.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *and* 25 *Vic., cap.* 67.

The Council met at Simla on Friday, the 20th August 1869.

The Council adjourned to Friday, the 27th August 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 20*th August* 1869.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 *and* 25 *Vic., cap.* 67.

The Council met at Simla on Friday, the 27th August 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*

His Excellency the COMMANDER-IN-CHIEF, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

The Hon'ble Colonel R. STRACHEY.

The Hon'ble COLONEL STRACHEY took the oath of allegiance and the oath that he would faithfully discharge the duties of Additional Member of the Council of the Governor General for making Laws and Regulations.

VOLUNTEER CORPS BILL.

His Excellency the COMMANDER-IN-CHIEF said that it had just been pointed out to him that the Volunteer Corps Act (No. XXIII of 1857), of which the present Bill proposed to amend the first section, required amendment in the eighth section also. That section provided that where a volunteer quitted his corps, he should deliver up his arms and uniform; that in default of doing so, he should pay a sum to be determined by a Regimental Court Martial, and that the adjudication of that Court should be deemed a judgment which might be enforced by any Civil Court under the provisions of Acts XXIII of 1852 and XXXIV of 1855. But those Acts had both been repealed by Act No. X of 1861, except as to the judgments of Charter Courts and Military Courts of Requests. Under these circumstances, he proposed, with the President's permission, to move that the Bill be referred to a Select Committee with instructions to report in a week.

The Motion was put and agreed to.

ADMINISTRATION OF ESTATES (HYDERABAD ASSIGNED DISTRICTS) BILL.

The Hon'ble MR. MAINE presented the report of the Select Committee on the Bill to facilitate administration to the estates of deceased British subjects in the Hyderabad Assigned Districts.

GÁRO HILLS BILL.

The Hon'ble MR. COCKERELL asked leave to introduce a Bill to remove the Gáro Hills from the jurisdiction of the tribunals established under the general Regulations and Acts. He said that early in the present century raids by the rude tribes occupying the Gáro Hills upon the inhabitants of the neighbouring villages in the plains on the north-east frontier of the Rangpúr district, resulting generally in the plunder of property and sacrifice of life, were of frequent occurrence. A special commission was appointed to enquire into and report on the causes of these outrages, and in this enquiry it was established that these acts of violence on the part of the mountaineers originated in the attempts of the Zamíndárs whose estates bordered on the hill-country to levy from the people occupying that tract certain cesses which they claimed as an asset of the permanent settlement under which those estates were held.

To remedy this state of things, Bengal Regulation X of 1822 was enacted, and the policy of the Government in regard to these hill-tribes was thus set forth in the preamble to that enactment:—

"The condition of the Gáro mountaineers and of the other rude tribes on that frontier has for some time past attracted much of the attention of the Governor General in Council, and the circumstances which have conduced to check the progress of civilization amongst them have been fully investigated and ascertained. With a view, therefore, to promote the desirable object of reclaiming these races to the habits of civilized life, it seems necessary that a special plan for the administration of justice of a kind adapted to their peculiar customs and prejudices should be arranged and concerted with the head men, and that measures should at the same time be taken for freeing them from any dependence on the Zamíndárs of the British provinces; compensation being, of course, made to the latter for any just pecuniary claims they may have over them."

That policy has been but imperfectly carried out. The provisions of Regulation X comprehended the suspension of the operation of the general Regulations within the tract to which it applied, the creation of the office of special Commissioner for the administration of justice and superintendence of revenue matters in supersession of the then existing tribunals, the prohibition of all attempts on the part of the Zamíndárs to exact cesses from the hill-tribes, and the compensation of the former for this compulsory surrender of any claims which might, on examination, prove to be well founded.

But these provisions came into operation only within that portion of the Gáro Hills which bordered on the districts of Rangpúr and Gawálpárá. In the southern range contiguous to the district of Maimansingh the relations between the Zamíndárs and the hill-tribes remained on much the same footing as they were previously to the enactment of Regulation X of 1822.

In the early part of 1866 the disputes arising out of the measures taken by the Rájá of Susang, a Zamíndár in the district of Maimansingh, to realize the cesses which he claimed from the Gáros as the occupants of land included within his permanently settled estates, culminated in a retaliatory attack by those tribes on one of the Rájá's villages, in which several persons were killed or wounded.

The office of special Commissioner had become long previously merged in that of Commissioner of Assam, and the immediate superintendence and administration of the tract of country occupied by the Gáros had devolved upon the

Deputy Commissioner of Gawálpárá, whose sphere of duties was too extended to admit practically of his devoting attention to the chief aim of the former special legislation in regard to these tribes.

The Government resolved, therefore, on the appointment of an officer for the administration of the Gáro Hills, who should be exclusively employed in carrying out the policy of that legislation the main object of which was, as stated in the preamble to Regulation X of 1822, to which MR. COCKERELL had already referred the "reclamation of these races to the habits of civilized life."

The severance of the connection between the Zamíndárs of the plains and the hill-tribes, and the suspension of the operation within the entire tract of country occupied by the latter of the general laws and regulations were, however, essential to the success of that administration. But the action of the Government in this direction was rendered nugatory by the High Court's construction of the scope of Regulation X of 1822 in the course of a suit which had been instituted by the Rájá of Susang against the Government.

It had been assumed that as the policy of that Regulation was obviously applicable to the entire country occupied by the Gáros, and by its eighth section the power of "separating temporarily or permanently *any tract of country occupied by Gáro mountaineers or other rude tribes* from the estates of any neighbouring Zamíndárs" to which the same was, or was claimed to be attached, was specifically vested in the Government, the latter could apply the provisions of the enactment at its discretion to the entire country included within the range of the Gáro Hills. But the High Court ruled that the exercise of this power was restricted to the limits of the Tháná divisions specified in the second section of the Regulation.

It had thus become necessary to supply the assumed deficiencies of Regulation X of 1822 by fresh legislation; and it was proposed to provide in the Bill, which he now asked leave to introduce, for the suspension of the operation of the general laws and regulations relating to the constitution and procedure of the ordinary courts of justice and offices of revenue within the entire country known as the 'Gáro Hills', and for the cessation of all interference on the part of the Zamíndárs of the plains with the tribes inhabiting the tract in question; as well as for the compensation of any just claims of the former which might be shewn to be prejudiced thereby.

It was further proposed to repeal a portion of Act VI of 1835, under which enactment the High Court at Fort William exercised a certain jurisdic-

tion and controul over the political officer in charge of the Khásyá and Jintiá Hills. As the British Government claimed no title of sovereignty over the Khásyá Chiefs, and the Khásyá Hills have never been held to be a part of British territory, it is doubtful whether the legislature had, under a proper limitation of its functions, the power of conferring this jurisdiction on the High Court. The inexpediency of suffering such jurisdiction to continue seemed to be unquestionable.

The following Select Committee was named on the Bill to amend Act No. XXIII of 1857:—the Hon'ble Messrs. Maine and Cockerell and the Mover.

The Council adjourned to Friday, the 3rd September 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 27th August 1869.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Friday, the 3rd September 1869.

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *Presiding.*

His Excellency the COMMANDER-IN-CHIEF, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

The Hon'ble Colonel R. STRACHEY.

VOLUNTEER CORPS BILL.

His Excellency the COMMANDER-IN-CHIEF presented the report of the Select Committee on the Bill to amend the Volunteer Corps Act (No. XXXIII of 1857).

ADMINISTRATION OF ESTATES (HYDERABAD ASSIGNED DISTRICTS) BILL.

The Hon'ble MR. MAINE moved that the report of the Select Committee on the Bill to facilitate the administration of estates in the Hyderabad Assigned Districts be taken into consideration. He said that the Committee had made no change in the Bill, which simply altered the definitions of "Presidency of Madras" and "Presidency of Bombay" in the Administrator General's Act, and would thus transfer, for the purpose of administering estates of deceased British subjects, the Hyderabad Assigned Districts from the Administrator General of Madras to the like functionary at Bombay. The Committee recommended that the Bill should be passed.

The Motion was put and agreed to.

The Hon'ble Mr. Maine then moved that the Bill be passed.

The Motion was put and agreed to.

EUROPEAN VAGRANCY BILL.

The Hon'ble Mr. MAINE asked leave to postpone the presentation of the report of the Select Committee on the Bill to provide against European Vagrancy.

Leave was granted.

The Council then adjourned till Friday, the 10th September.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 3rd September 1869.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla on Friday, the 10th September 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.M.S.I., *presiding*.
His Excellency the Commander-in-Chief, K.C.B., G.C.S.I.
Major-General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.
The Hon'ble H. Sumner Maine.
The Hon'ble John Strachey.
The Hon'ble B. H. Ellis.
The Hon'ble F. R. Cockerell.
Colonel the Hon'ble R. Strachey.

VOLUNTEER CORPS BILL.

His Excellency THE COMMANDER-IN-CHIEF moved that the Report of the Select Committee on the Bill to amend Act No. XXIII of 1857 be taken into consideration. He said that he had explained on a former occasion that there might be reason for re-considering the form of the proposed Act.

He had found on referring to Act XXIII that further alterations were required, and the Select Committee had come to the conclusion that, instead of passing a mere amending measure, it would be better to repeal that Act and to re-enact it with the changes necessary to adapt it to the Articles of War and the present circumstances of the country.

They had expressly extended the proposed Act (so far as regards British subjects) to allied Native States.

They had declared that the procedure in Volunteer Courts Martial should be in accordance with that of Courts Martial held under the Articles of War for the time being in force for Her Majesty's army.

In accordance with a recent change in the Articles of War, they had made nine, instead of thirteen, the minimum number of members of a General Court Martial.

They had provided that the sum adjudged by a Regimental Court Martial in case a retiring member of a Volunteer Corps failed to deliver his arms, &c., should be recoverable as if a decree had been pronounced for it under the Code of Civil Procedure; and in lieu of the provision contained in section 14 of the Act, they proposed that fines imposed by a Court Martial should be recovered by a Magistrate as if they had been imposed by himself.

Lastly, they were of opinion that section 22 of the present Act might be omitted as obsolete.

These were the principal changes which had been suggested. If the Council agreed to them, His Excellency would have, at a subsequent stage, to move a further amendment.

The Motion was put and agreed to.

His Excellency the Commander-in-Chief then moved that, in section 2, the following words be omitted:—"But nothing in this Act shall apply to any Volunteers listed or mustered and in pay." This clause was taken *verbatim* from the present Act. He had made enquiries, but had been unable to ascertain the intention of the legislature in introducing it. In fact, he could not understand its purport or effect. He was of opinion that if it were left, considerable confusion might be caused. There were several Volunteer Corps which received a grant and capitation allowance, and it was at least arguable that the members of such corps were "in pay" within the meaning of the clause quoted. It was obviously desirable that there should be no doubt as to whether the Bill affected such persons.

The Motion was put and agreed to.

His Excellency the Commander-in-Chief then moved that the Bill as amended be passed.

The Motion was put and agreed to.

EUROPEAN VAGRANCY BILL.

The Hon'ble Mr. Maine presented the Report of the Select Committee on the Bill to provide against European Vagrancy.

GÁRO HILLS BILL.

The Hon'ble MR. COCKERELL introduced the Bill to remove the Gáro Hills from the jurisdiction of the tribunals established under the general Regulations and Acts, and moved that it be referred to a Select Committee with instructions to report in a week.

He said that the Bill was framed on the model of Act XXII of 1860. That Act was passed for the purpose of removing certain hill tracts within the limits of the District of Chittagong from the jurisdiction of the ordinary tribunals under circumstances very similar to those which had given rise to the present legislation; and the Bill would divest the civil, criminal and revenue Courts of all jurisdiction, and suspend the law relating to procedure, within the tract of country comprised in the Gáro Hills, the boundaries of which were described in the 4th section.

The administration of justice within that tract would be vested in such officers as the Lieutenant-Governor might appoint, subject to such rules of procedure as might from time to time be prescribed by the same authority.

Provision was also made for the enforcement by the Local Government of the separation from the estates of zamíndárs of any portion of the hill tracts bordering on such estates which were attached, or were claimed to be attached, to the same, and for awarding the zamíndárs such compensation as they might be found to be entitled to for the compulsory surrender of their rights.

The Bill further proposed to repeal Regulation X of 1822, and so much of Act VI of 1835 as relates to the Khásyá Hills.

Most of the provisions of the former enactment had become obsolete.

The office of Special Commissioner for the administration of the North-East Frontier had long since been amalgamated with that of Commissioner of Assam, and that officer at the present time had no connection with the administration of any portion of the tract to which the Bill applied.

The maintenance of the distinction as to jurisdiction and procedure between suits in which one or both of the litigants belonged to the Gáro or other hill tribes, and suits in which neither of the parties was of those races created by section 6 of that enactment, was inexpedient.

As the law stood, a suit instituted by a zamíndár against the Government, the cause of action arising within the hill tract, and seriously affecting the whole policy of the Government towards the inhabitants of that tract would, if the amount at stake exceeded five thousand rupees, be ultimately referable to the High Court, and thus one of the main objects of the present legislation would be completely defeated.

The need for repealing so much of Act VI of 1835 as referred to the Khásyá Hills was explained by MR. COCKERELL when the subject of the proposed legislation was last before the Council, but he had since been informed that some small tract of country within these hills *did* form part of British territory. The reasons for removing the Gáro Hills from the jurisdiction of the ordinary Courts were no less applicable to this tract as well as to the Jintíá and Nága Hills, and the propriety of extending the provisions of the Bill to all those tracts would be a question for the consideration of the Select Committee, to which he hoped this Bill would be referred.

The Motion was put and agreed to.

COURT FEES' BILL.

The Hon'ble MR. COCKERELL moved for leave to introduce a Bill to provide for the better regulation of Court fees.

He said,—"The stamp fees now leviable in judicial proceedings were fixed by Act XXVI of 1867.

The alterations of the former law effected by that enactment embraced—

1st.—A general enhancement of the scale of fees leviable on the institution of all civil suits;

2nd.—An increased valuation of land for the purpose of computing the amount of the fee chargeable on suits relating to such property;

3rd.—The abolition of the privileged rates up to that time accorded to suits instituted in the revenue Courts between landlord and tenant, and the application to such suits of the rates leviable in the civil Courts;

4th.—The imposition of a fee of one rupee on the institution of certain criminal complaints;

5th.—A slight enhancement of the fees obtaining in certain miscellaneous judicial proceedings, and the imposition of a fee on certain petitions and applications when presented to the Magistrate in his executive capacity.

These changes were avowedly experimental. It had been strongly represented to the Government that the litigation of the country could, without prejudice to the administration of justice, bear a greater burden of taxation than it had up to that time been subjected to: it was certain that the scale of fees then in force needed revision on account of its irregularity, and the extreme inequality of the incidence of the taxation imposed by it, and it was considered expedient and equitable that the opportunity afforded by such revision should be taken to obtain the increased revenue needed to cover the additional outlay which had then been resolved on for the improvement of our Courts of justice.

But when, after the new rates had been some months in operation, allegations of their repressive effect on the general litigation of the country reached the Government, Your Excellency's predecessor, on one public occasion at least, pledged the Government to watch closely the operation of the new Act, and to grant relief if, after a careful investigation of its results, such a measure should seem to be called for.

The Act came into force on the 1st May 1867. The results of its operation during the first twelve months have been examined in comparison with the results of the operation of the former law during the corresponding period immediately preceding the date from which the existing law took effect.

The effect of the general enhancement of the rates of fees leviable on all civil suits combined with the increased valuation of land, was a reduction in the number of institutions during the first twelve months of the operation of Act XXVI of 1867, as compared with the number instituted during the twelve months immediately preceding the date on which it came into force, of nearly 14 per cent.

This general result, examined in detail, shows a much larger proportion of decrease in the number of institutions of suits regarding land than in the case of claims to money, the proportion of suits involving some interest in land which, under the former law, was about one-fifth having, during the first year's operation of the existing law, fallen to less than one-sixth of the entire litigation.

Such a marked decrease as 14 per cent. in the number of suits instituted is in itself sufficiently suggestive of the baneful effects of the existing law upon the administration of justice, but it becomes more so when contrasted with the course of litigation previous to the enactment of that law; for the returns of the four years immediately preceding 1867, show a steady progressive increase, year by year, of from five to six per cent. in the entire number of civil suits instituted throughout India; hence as, but for the passing of Act XXVI, there would have probably been a corresponding increase in 1867, the actual decrease caused by the enhanced rates during the first twelve months, in which they were in force, may be reckoned at not less than 20 per cent.

As already stated, the special investigation traced the results of the existing rates of institution fees down to the 30th April 1868. Further statistics bringing the record of the general litigation of all India, except the territories subordinate to the Government of Bombay, under the operation of these rates to the close of the year 1868, have been recently obtained. In the Bombay Presidency the provision of the High Court's Letters Patent, which empowers the Local Government to call for statistics regarding the administration of justice, and lays that Court under an obligation to comply with such requisition, would appear to be inoperative, as I am told that no such statistics are furnished by the High Court, and I have on that account been unable to procure the required information in regard to Bombay. The returns which have been furnished show that, whilst a not inconsiderable reaction has taken place in regard to the resort of the people to the civil Courts of such recently-acquired territories as the Central Provinces, Oudh and even the Panjáb, in the older territories of Bengal Proper, the North-Western Provinces and Madras, where the British Administration is of much longer standing, and civil rights are better defined or at least better understood, the repressive influence of the new rates on litigation is rather increased than abated.

With these facts before it, the Government has decided on conceding a considerable reduction of the existing rates of Court fees leviable on the institution of civil suits; and I venture to add that it is not the least satisfactory reflection in regard to this decision, that it should have been arrived at, whilst the Government still retained the advantage, of which it is, unfortunately for the country, so soon to be deprived, of the counsels of my honourable and learned friend (Mr. Maine), who, as a member of the then existing Government, is fully conversant with the circumstances which attended the legislation of

1867 on this subject; and that the present measure should be inaugurated, as I believe it to be, with that gentleman's full concurrence.

Repressive as the rates fixed by the Act of 1867 are believed to have been, their financial results have been eminently successful. It is true that the somewhat extravagant anticipations of their projectors have not been even approximately realized, but a very considerable increase of revenue has been obtained through their operation. I think it necessary to draw attention to this fact, because I have seen it stated on more than one occasion that not only had the general litigation of the country been checked to a very serious extent, but that the public exchequer had actually been a loser by the change in the law. So far from that being the case, notwithstanding the number of suits instituted fell off to the extent already described, the revenue derived from the decreased number of institutions was no less than 13½ lákhs, or nearly 25 per cent. in excess of the amount obtained under the provisions of the former law.

The changes effected by Act XXVI in regard to suits instituted in the revenue Courts between landlord and tenant resulted in the falling off of the number of such suits instituted during the first year's operation of that enactment to the extent of about 26 per cent. as compared with the institutions of the year immediately preceding, and a simultaneous increase of revenue to the amount of upwards of three lákhs or nearly double the entire amount of revenue yielded by suits of this class under the former law.

The burden of this greatly increased taxation was further aggravated by the absence of any express provision in the enactment for determining the valuation of certain suits of this class, *e. g.*, suits to recover a right of occupancy or to enforce ejectment, and suits to obtain a pattá, or a kabúliyat,—the value of the subject-matter of which, though not absolutely indeterminate, can only be determined, and even then not very satisfactorily, after a protracted and intricate investigation. For a claim to recover a right of occupancy of, or enforce a right of ejectment from, any land bears obviously a very different value from that of a claim to recover a proprietary title in such land, and the rule for the computation of the latter is altogether inapplicable to the former.

The want of a rule for the guidance of the Courts in the assessment of such claims has necessarily led to a great variety of practice, and on no point is the amendment of the existing law more urgently required.

So far as the working of the one-rupee stamp in certain criminal cases can be tested by the statistics which have been furnished, the impost would appear to have had little or no deterrent effect on the institution of such cases, for the returns show a falling off of five per cent. only in the number instituted during the year, subject to the payment of a fee, as compared with the number instituted during the corresponding period when no fee was required. I have little doubt, however, but that the returns for the period during which the fee was not imposed are imperfect, and cannot be safely used for the purposes of comparison; for in the absence of any special register of the class of petitions to which the fee was intended to apply, there would be no certain guide for the preparation of a correct return of such petitions, and it is most probable that many which should have been included in the return have been omitted. Opinions founded on administrative experience of the question are pretty evenly divided. Whilst the Governments of Bombay and Madras and most of their subordinate officers advocate the abolition of the fee, the several Administrators of the Provinces included in the Bengal Presidency are, with rare exceptions, in favour of its retention. On the side of the abolitionists opinion is purely theoretical; no facts are adduced to show that any real hardship is inflicted on the community by requiring persons to contribute something towards the cost of the machinery employed in the redress of their petty grievances; whilst on the other side it has been shown that a small fee does act as a rough sieve to the multifarious complaints which would otherwise inundate the criminal Courts, wasting the time of the magisterial officers, entailing much hardship on persons, who are often needlessly and even vexatiously brought into the Courts as witnesses in such cases, and tending to no public benefit.

The change of the law in regard to the fees leviable on miscellaneous petitions and applications has produced an increased revenue of about 6 lákhs, without apparently entailing any hardship save in a few exceptional cases. For example, (1), a fee of one anna only is charged on a petition relating to conservancy matters addressed to a Municipal Commissioner in a Presidency town, but under the operation of the existing law such a petition, when presented to a Municipal Commissioner in the Mofussil, is subjected to a fee of eight annas. (2), A salt-merchant desiring a pass, or a licensed spirit-vendor requiring a renewal of his license, must each pay a fee of eight annas on their respective petitions or applications to the Collector, although the communication is necessitated by the nature of their contract and dealings with the

Government. (3), The farmer of a public ferry can only obtain the interposition of the Magistrate to secure the recovery of an unpaid toll of very trifling amount by the payment of a similar fee on the petition which he must present to the Magistrate for that purpose.

Equitable considerations clearly call for a certain measure of relief in such cases.

I now come to the concessions and other alterations of the existing law contemplated in the Bill.

It is proposed, *first*, to substitute a fee of 6 annas on the institution of a suit not exceeding Rs. 5, and a fee of 12 annas on a suit exceeding Rs. 5 and not exceeding Rs. 10, for the one rupee chargeable in either case under the existing law.

Secondly, to reduce the average percentage of the institution fee on all civil suits of amount ranging between Rs. 10 and Rs. 1,000, from 10, the present rate, to 7½, to effect a small reduction of the percentage of institution-fee on suits of amount exceeding Rs. 1,000, and to revert to the principle of a maximum fee which obtained under the former law, making Rs. 5,000 the fixed limit.

Thirdly, to reduce the fixed valuation of temporarily settled land and land exempt from the payment of Government revenue from 8 to 5 times the amount of the annual revenue, and from 20 to 15 times the annual profits of the land, respectively, and also to restore the provisions of Note (e), Article 11, Schedule B, Act X of 1862, or to introduce a provision of similar import.

Fourthly, to provide for the computation of the institution-fee leviable on suits for the recovery of a right of occupancy, and other suits between landlord and tenant, the value of the subject-matter of which is not readily determinable, upon one year's rent of the land to which such suits have reference.

Fifthly, to reduce the fee on criminal petitions from one rupee to eight annas.

Sixthly, to reduce the fee on certain miscellaneous petitions from eight annas to one anna, and to exempt certain other petitions from the payment of any fee.

Seventhly, to substitute for the *ad valorem* fee now leviable on certain summary suits instituted in the Bombay Presidency under Act XVI of 1838 and the Bombay Act V of 1864, a fixed rate of eight annas.

The first of these proposals involves a concession to suits of very small amount or value not accorded to them under any previous law. Heretofore an uniform rate of one rupee has been levied on all suits up to Rs. 10 in amount or value, by which the overwhelming majority of suits of this class are made to bear a tax wholly disproportioned to that imposed on suits of larger amount, and as about one-sixth of the entire litigation is included in this class, the area of unequal taxation is considerable.

By the contemplated reductions, the proportion of the institution-fee to the amount of suits of this class will be brought into harmony with the scale of fees applicable to other suits.

The 7½ per cent. on the amount of suit, at which rate it is proposed to fix the institution-fee on suits of amount or value ranging between Rs. 10 and Rs. 1,000, represents the exact mean percentage on the amount litigated of the varying rates applicable to such suits under the operation of the scale of fees contained in Act X of 1862, and as the ascents of the existing scale will be maintained, the contemplated reduction amounts to a surrender of one-fourth of the revenue now derived from this, which is, both numerically and with regard to the aggregate amount of fees derived from it, by far the most important class of suits.

The proposed scale of fees is not calculated to effect any material reduction of existing rates on suits whose amount or value ranges between Rs. 1,000 and Rs. 10,000.

The reduction becomes greater when the litigated amount exceeds Rs. 10,000, and the benefit of the maximum fee is enjoyed when that amount reaches 8½ lákhs of rupees.

Suits involving a larger amount are doubtless of rare occurrence, but as such claims do occasionally arise, and the present unlimited scale of fees is believed to operate as an absolute prohibition of the litigation of those cases, it has been thought desirable to revert to the principle of the former law in this respect.

As regards the valuation of landed property, it is not thought that the value of land under permanent settlement, fixed by the existing law is, in average cases, in excess of its real value, but eight times the amount of the Government revenue is believed to be a relatively excessive valuation of temporarily settled land, having regard to its much heavier assessment and the narrower margin of profit which it yields to the settlement-holder. It is thought also that fifteen times the annual profits accruing therefrom afford a better approximation to the true market-value of land exempt from the payment of Government revenue, than the valuation which obtains in regard to suits relating to such land under the present system.

There is a large class of suits also to which neither of these forms of valuation is properly applicable. I refer to claims to mere parcels of land included within the limits of some settled estate, but not assessed with any defined or specified portion of the amount of the Government revenue payable on the latter. Such cases were formerly met by the provisions of Note (e), Article 11, Schedule B, Act X of 1862, which it is now proposed to restore.

For suits to recover a right of occupancy and the like, the value of the subject-matter of which is not susceptible of ready determination, some arbitrary method of valuation must be adopted, and the annual rent of the land to which such cases relate seems to afford the best relative criterion of the value of the thing sued for.

The maintenance of the fee levied on certain criminal petitions is, regarded from a financial point of view, unimportant, for its operation thus far yields an annual revenue barely amounting to 2½ lákhs. But having regard to the case made out for its retention by the authorities in Bengal, it cannot be altogether abandoned, and the best practicable solution of the difficulty created by the conflict of opinion which prevails on the subject seems to lie in the compromise of a reduction of the amount of the fee from one rupee to eight annas.

The reduced rate of fees on miscellaneous petitions and applications is intended to apply only to petitions relating to conservancy, presented to Municipal Commissioners, or by persons having contracts or dealings with the Government, such petitions or applications being in the nature of communications addressed to the officers of Government on the subject of such transactions. Petitions of this class will thus be placed on the same terms as applications addressed to a Collector of Customs.

Looking to the character of the awards obtained in summary suits instituted in the Courts of the Bombay Presidency under the provisions of Act XVI of 1838 and the Bombay Act V of 1864, *i. e.*, their liability to be set aside by judgments passed in regard to the same cause of action in a regular suit, it seems more equitable to treat such institutions as miscellaneous applications, and subject them to a fee of eight annas only.

As a set-off against the proposed concessions, and the probable loss of revenue resulting therefrom, it is proposed, *first*, to discontinue the grant of any refund of fees levied on the institution of original suits, and *secondly*, to raise the duty chargeable on the grant of probates and letters of administration under the Indian Succession Act and of certificates under Act XXVII of 1860, to an equivalent with the rates levied in England in like cases. The system of refund as applied to the fees paid on the institution of original suits is inconsistent with the principle on which those fees are regulated; for their amount is fixed, not in proportion to the measure of labour imposed upon the Court in the adjudication of the suit, but according to the value of the matter litigated, *i. e.*, in proportion to the advantage which the suitor obtains or seeks to obtain through the Court's action. Now in the vast majority of cases in which the plaintiff withdraws from his suit at an early stage of the proceedings, and thereby recovers by refund a moiety of the institution-fee, he has obtained no less advantage from the Court's agency than the suitor whose case has proceeded to an actual trial, and if such is the case, then on the principle on which these fees are fixed and levied, the suitors in either case should contribute equally to the cost of the machinery from which they derive an equal benefit.

The enhancement of the rates of duty leviable on grants of probate and letters and certificates of administration to a par with the rates charged in like cases in England seems clearly justifiable.

In the case of most other stamp-duties, the rates are, where they differ from, in excess of, the English rates, and there seems to be no reason for imposing in those cases a lighter taxation than they would be subjected to under the English law.

I have gone somewhat further into the details of the proposed Bill than usual at this stage of legislation, because I think it most desirable that the first intimation of any reduction of the judicial stamp fees now in operation having

been actually resolved on, should be accompanied with the most explicit and unqualified statement of the exact measure of the concessions which the Government is prepared to grant.

The first sound of any overt action on the part of this Council in the direction of reducing the charges on the administration of justice, is sure to have the effect of arresting and keeping back as much of the incoming litigation as can be postponed consistently with a due regard for the Act of limitation, and of thereby seriously disturbing the business of the Courts. It is on this account most desirable that the progress of measures of this kind should, after their introduction into the Council, be as rapid as possible, and that they should not be kept long before the public, thereby prolonging the derangement of the administration of justice which must continue to a certain extent as long as they remain pending.

It was this consideration which justified the rapid progress of the existing law through the Council, and must ever be held to excuse speed on the part of the legislature in dealing with like measures.

Viewed in this light, the present time seems most opportune for the inauguration of this measure, for, throughout the greater part of the country, the civil Courts are about to be closed for a considerable period. There will be ample time consequently during the recess, without prejudice to the course of litigation, for a thorough ventilation of public opinion on the details of the proposed legislation, and I trust that, soon after the Courts re-open, we may be in a position to proceed with the Bill, and pass it through its remaining stages, ere the close of the current year, so that the new law may be brought into operation, simultaneously with the new Stamp Act, on the 1st January 1870."

The Hon'ble MR. MAINE obtained the permission of the President to offer some observations on the Motion, upon the ground that he would not have an opportunity of joining in the discussion at any later stage, and said that, independently of the reference which his hon'ble friend had been good enough to make to him, he had been desirous of explaining away two misapprehensions, one much more important than the other, which were disclosed by the papers which he and his hon'ble friend had examined. One of these was the mistaken idea that the Government of India had ever started or encouraged the doctrine that the taxation of the administration of justice was a

justifiable mode of recruiting the general finances of the empire. In order to dispose of that statement, it would be enough to refer to a paper furnished to MR. MAINE by the Secretary in the Financial Department. The figures could not be quite confidently interpreted on account of the system which, MR. MAINE hoped, would be abolished, of lumping together the revenue derived from general or documentary stamps and that derived from judicial stamps which were in reality court fees. A conclusion which was roughly true might, however, be founded on the figures, and it appeared from them that the litigating part of the Indian community paid just about half the expense of the administration of justice, and this result was reached without debiting that administration with the cost of the revenue Courts, which, of course, in many of their functions, were just as much Courts of justice as any others. The inference was that the part of the community which, in India, availed itself of the Courts, contributed less to their cost than the corresponding section of any civilized community, although the Courts in this country were resorted to in many matters which elsewhere were settled by private adjustment. All the rest of the expense of the administration of justice was paid by the general body of tax-payers for which the Government was trustee. The question, therefore, whether justice might be taxed for the general purposes of the State did not arise in India. Nor did the history of the scale of 1867 bear out the doctrine he had been disclaiming. Mr. Cockerell had correctly stated that there had been many representations to the Government of India that the scale of 1862 was too low and capriciously arranged. These representations might not have been attended to but for the anxiety of the late Viceroy to carry into effect a measure which, in the farewell given to Lord Lawrence by the community of Calcutta, had been described by the Commander-in-Chief as one of his highest titles to the recollection of the people of India. Lord Lawrence had, very early in his career, formed the opinion that the greatest evils arose from the under-payment of the lower Mofussil Judges and of the officers of their Courts, and he had much at heart the improvement of their position. The plans which he had been considering came to maturity in 1866; but, as His Excellency would easily believe, the finances of the country were ill able to bear the additional burden. Accordingly, it was determined to institute an enquiry directed to ascertain whether, as the quality of the justice to be administered was to be so much improved, the suitors might not fairly be asked to contribute something more towards the cost of administering it. Every precaution was taken to secure a great weight of authority for the new scale. The Commission appointed by the Government included gentlemen of the highest judicial

eminence both in the High and in the Mofussil Courts, and it was requested so to arrange its sittings as to be assisted by the Additional Members of Council who were just arriving in Calcutta. The scale of 1867 was the result of the labours of the Commission, and though, as Mr. Cockerell had put it, there might be some appearance of haste in passing the measure through the Council; this haste was, as his hon'ble friend had also correctly stated, no more than was inevitable in the case of taxing Bills of this nature. There was nothing like precipitation in settling the basis of the measure. Mr. Cockerell was further right in saying that Lord Lawrence promised an enquiry into the working of the new scale, which some had questioned from the first, though these were mostly persons under the influence of *a priori* ideas. The present measure resulted from that enquiry. The statements and opinions placed before Government perhaps struck MR. MAINE as rather more contradictory and unsatisfactory than they appeared to his hon'ble friend; but still MR. MAINE had no doubt that the scale required reduction in some particulars. Such experiments as the Commission of 1867 had attempted were always, as he supposed, more or less, leaps in the dark; and it certainly seemed as if the Commission had to some extent leapt too far. But assuredly the last thing which could be attributed to it, or to the Government, was a policy of taxing litigants, as a separate class, for the benefit of the general finances.

The other misapprehension to which MR. MAINE had referred was of very much less importance. It seemed to be supposed that he himself had at some time or other elaborately justified the policy of filling the Treasury by taxing litigants. He might be permitted to say that he had never done anything of the kind. What he really had done was to contend against the extreme theories—and His Excellency must have already learned that this was a country of extreme theories—of certain gentlemen who argued, if the logical consequences of their doctrines were to be accepted, that the litigant should contribute nothing towards the expenses of litigation. Some people seemed to suppose that Governments ought to be like oriental monarchs who first appropriated the greatest part of the property of their subjects, and then, by way of compensation, sat in the gate and administered justice for nothing. MR. MAINE was not going to trouble the Council with any discussion of abstract doctrines; but, as in matters of this kind a grain or two of fact was worth a bushel of theory, he would call their attention to a fact immediately before their eyes which came home to them for a special reason. A late colleague of theirs, Bábu Prasanna Kumár Thákur, a most astute lawyer, left a

will in which, for reasons entirely personal to himself and his family, he raised a series of the most difficult questions which could possibly perplex an Indian Court. He in fact attempted, for objects of his own, to see how far some of the most recondite feudal doctrines of English law could be made to apply to India. During the last few months, much of the time and a vast amount of the intellectual strength of the Calcutta High Court had been employed in construing this will. But why on earth should the Government furnish for nothing a most costly machinery for the purpose of unravelling the perplexities of such a document? Or, to take the converse case, why should it supply Judges gratuitously to construe perfectly stupid and ungrammatical wills? Or why should it pay for the winding-up of an insolvent joint-stock Company? The truth was that, though people were often involved in litigation through no fault of their own, yet a vast amount of litigation arose from complications of fact produced by the neglects of themselves or their predecessors in title, by unbusiness-like habits, by heedlessness, or by sheer folly. The true doctrine, MR. MAINE submitted, was that the litigants and the general tax-payers should each contribute something. Nobody denied that the litigants benefited by the Courts, and nobody would deny that the rest of the community derived some advantage from the solution even of such questions as those raised by this Bengálí gentleman's will. What the proportion paid by each should be, was a question, not of theory, but of experience, to be equitably settled by the Government as trustee for all, and it was due to the Commission of 1866 to say that they had furnished the Government with much valuable experience to work upon.

The Motion was put and agreed to.

The following Select Committee was named on the Gáro Hills Bill:—The Hon'ble Mr. Maine and the Mover.

The Council then adjourned to Friday, the 17th September 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 10*th September* 1869.

Office Supdt. Govt. Printing — No. 128 L D.—12-11-73.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 and 25 Vic., cap. 67.

The Council met at Simla on Friday, the 17th September 1869..

PRESENT:

His Excellency the VICEROY and GOVERNOR GENERAL of India, K.P., G.C.S.I., *presiding.*

His Excellency the COMMANDER-IN-CHIEF, K.C.B., G.C.S.I.

Major-General the Hon'ble Sir H. M. DURAND, C.B., K.C.S.I.

The Hon'ble H. SUMNER MAINE.

The Hon'ble JOHN STRACHEY.

The Hon'ble B. H. ELLIS.

The Hon'ble F. R. COCKERELL.

Colonel the Hon'ble R. STRACHEY.

EUROPEAN VAGRANCY BILL.

The Hon'ble MR. MAINE, in moving that the Report of the Select Committee on the European Vagrancy Bill be taken into consideration, said that he would submit to the Council the amendments proposed by the Select Committee, observing of them generally that they were either intended to prevent the measure from pressing too harshly on the unfortunate class to which it would apply, or meant to bring it within the scope of the Council's legislative powers—powers which, MR. MAINE had before explained, were defective in one important particular. Section 2, which provided that different parts of the Bill should come into operation at different dates, would be more appropriately mentioned after the amendments had been described, but he might now state that the bulk of the measure would not take effect till the Government of India introduced it by notification. So much of it in fact as related to vagrancy, properly so called, depended on the establishment of Government work-houses which had yet to be built. There were some parts of the country (among which possibly was the Madras Presidency) in which houses of refuge already existed which might be licensed under section 11, clause 2, and here perhaps the measure

might come into operation at once after due communication with the Local Governments. In section 3, Europeans were made to include Americans and Australasians, the last word being used because the case was just possible of a man born in New Zealand of European parents becoming a vagrant in India. The third clause of the same section had also been altered. The 'Magistrate' therein defined was not, it should be understood, the authority who made declarations of vagrancy, but the authority who punished for certain special offences committed by the vagrant class. Originally, the fear of placing the vagrants out of the reach of the arm of the law led to conferring these powers of punishment on all Magistrates, but the Committee had confined them to Magistrates not lower than Subordinate Magistrates of the first class. Section 4, and those which followed, related to declarations of vagrancy. As the Bill first stood, these declarations could be made in the Presidency Towns by any Magistrate of Police, and, outside them, by any Justice of the Peace or Superintendent of Police. The Committee, however, proposed, as regards the Mofussil, to confine the power of making declarations, which took away certain privileges, to Justices of the Peace exercising the full powers of a Magistrate, and these functionaries alone could, as such, declare men to be vagrants; but, under a later section (10), selected officers could have the power of making the declarations conferred on them by the Local Government, and there were many parts of India where this expedient would have to be freely resorted to. No other important change was made in these sections except that in section 5, when the declaring functionary had reason to believe that there had been a previous declaration of vagrancy, he was relieved from the necessity of endeavouring to find work for the vagrant (who by the hypothesis was probably a confirmed vagrant) and might send him at once to the work-house. Section 9 was new, and had been inserted at the instance of the Bengal Government. It provided that Magistrates of Police and Justices of Peace with full powers might give certificates or passports for a time not exceeding six months, which would relieve the person named in them from molestation under the Act. MR. MAINE hoped that this power would be used with discretion, or there might be a number of licensed vagrants wandering over the country. If it was abused, the exercise of the power could be regulated by a rule of the Governor General in Council under section 34. In the sections relating to work-houses, there was no change of importance proposed by the Committee.

Section 16 of the Bill, as proposed to be amended, and the sections which followed, deserved in MR. MAINE's opinion attentive consideration. They provided

that an agreement might be entered into between the Secretary of State and any vagrant or other person of European extraction, by which the Secretary of State was to furnish such vagrant or other person with a free passage to his home, while the vagrant himself was to bind himself to proceed to a specified Indian port, to embark on board a ship to be specified in a particular way, to remain on board till the ship reached her destination, and not to return to India during five years, unless specially permitted so to do by the Secretary of State. The breach of any of the terms of the agreement was made criminally punishable. Of course, in order that the system (which was rendered necessary by the failure of the Government of India to obtain powers of compulsory deportation) might work smoothly and satisfactorily, there must be an understanding between the Local Governments up-country, and those of the territories in which the Indian ports were situated. Such an understanding would no doubt be facilitated by a rule of the Governor General in Council under section 34.

Section 23 had been materially modified by the Committee. On the one hand, it no longer applied to mere begging, on the other it applied to all persons of European extraction, even though they were British subjects. It provided that imprisonment during one month for a first offence, during two for a second, and so forth, might be inflicted on any person found asking for alms when he had sufficient means of subsistence, or asking for alms in a threatening or insolent manner, or continuing to ask for alms after being required to desist. Lest anybody should suppose that the class which was in danger of coming under these provisions was treated with undue harshness, MR. MAINE would refer the Council to the English Statute (5 Geo. IV., cap. 83, s. 3), which corresponded with these provisions. Under it any person found wandering abroad, or begging, or causing any child to beg, was to be deemed an idle and disorderly person, and might be sent to the House of Correction by a Justice of the Peace for a month's hard labour. In India, mere begging without more was not to be, as in England, an offence. Mere begging would only expose the beggar to be declared a vagrant, and to be thereupon dealt with under a process, which MR. MAINE ventured to describe, as one of peculiar tenderness.

Section 25, as amended, differed much from its original form. Originally it made it a punishable offence in the master of a ship to bring to India a man once convicted of felony. This appeared too harsh to some, and it was proposed therefore at least to insert the word "knowingly" in the definition of the offence. But the effect of this would be to throw on the prosecu-

tion the burden of proving knowledge, proof of which was, under the circumstances, virtually impossible. Accordingly, the Committee still made it a substantive offence to bring an ex-felon or ticket-of-leave man to India; but by an innovation on usage, it permitted the master of the ship to give evidence himself, and, if he satisfied the Magistrate that he had made reasonable enquiry as to the persons he had taken on board, he was not to be fined. Further, the Government of India might exempt from the provision any class of ships, or any class of passengers. It might be unreasonable to require a ship-master to ask a well-dressed person who paid a full first class fare whether he had committed a felony. Yet he might turn out to be a forger.

This last section would only come into operation on the first day of next year, by which time the Viceroy would have addressed the Governors of the Australian Colonies, and requested them to call the attention of the sea-faring classes to the new law. Certain sections of the measure would, however, come into force at once, and these MR. MAINE would read at length, so far as they were important:—

"Any person of European extraction found asking for alms when he has sufficient means of subsistence, or asking for alms in a threatening or insolent manner, or continuing to ask for alms of any person after he has been required to desist, shall be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term not exceeding one month for the first offence, two months for the second, and three months for any subsequent offence.

Any vagrant or other person of European extraction may enter into an agreement in writing with the Secretary of State for India in Council, binding himself—

(*a*) to proceed to such port in British India as shall be mentioned in the agreement;

(*b*) there to embark on board such ship and at such time as shall be directed by an officer appointed in this behalf by the Local Government of the territories in which such port is situate, for the purpose of being removed from India at the expense of the said Secretary of State in Council;

(*c*) to remain on board such ship until she shall have arrived at her port of destination; and

(*d*) not to return to India until five years shall have elapsed from the date of such embarkation.

Any person entering into an agreement under section seventeen and failing to proceed in pursuance thereof to the port therein mentioned,

or refusing to embark when directed so to do under the same section,

or escaping from the ship in which he has so embarked before she shall have reached her port of destination,

shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to six months.

Returning to India.

Any person returning to India within five years of the date of his embarkation pursuant to any agreement entered into under section seventeen, unless specially permitted so to do by the Secretary of State for India, shall for every such offence be punishable, whether he be or be not an European British subject, on conviction before a Magistrate, with rigorous imprisonment for a term which may extend to two years."

MR. MAINE trusted that under the provisions he had quoted, there would be a considerable immediate clearance of the vagrant class. The violent and confirmed vagrant would often bring himself under the section first read, while many of the merely unfortunate would probably enter into the agreement provided for by the later sections. Even, therefore, before the measure came fully into operation through the establishment of Government work-houses, MR. MAINE believed it would not be inefficacious for good.

Such was the measure, as the Committee advised the Council to pass it. It did not promise to be as effectual as it would have been if the Indian Legislature had obtained the power of deportation, which was once hoped for. But even as it was, MR. MAINE believed that the new law would do much to mitigate the great evil and danger against which it was directed.

The Hon'ble MR. COCKERELL expressed a hope that the provisions of this Bill, which were necessarily of a wholly experimental character, would be found to work successfully; but he ventured to express the opinion that their success must mainly depend on the efficiency of the rules to be framed by the Government of India, under section 34, for he thought it was hardly to be doubted but that a too indiscriminate enforcement of many of these provisions in the case of the very large class likely to come under the definition contained in section 3, might very probably entail a greater evil on the tax-paying community than that which the proposed Act was designed to remove.

His hon'ble and learned friend, the mover of the Bill, had directed especial attention to the provisions of section 23, and dwelt on the advantages which he assumed would accrue therefrom. MR. COCKERELL must say that for his own part he entertained grave doubts as to the working power of these provisions. It was all very well to say that an European vagrant found asking alms "shall be punishable on conviction by a Magistrate," but how is he to be brought before the Magistrate if there was to be no power of arrest without warrant in such cases? The European, unlike the Native mendicant, had no

fixed local habitation, and, before a summons could issue on a charge of an offence under this section, he would, in all probability, be beyond its reach, and its service would be found impracticable. There was, perhaps, an indirect way of bringing the offender to account through the powers vested in the Police by section 4; but then the operation of that section was deferred, and in the meanwhile the provisions of section 23 were likely to prove inoperative. If the apprehended difficulty should arise, it might be met by the Government putting in force the provisions of section 4, and instructing all Police officers to act up to those provisions only in the case of persons who, being seen by or represented to them to be asking alms, appeared to fulfil the first of the conditions constituting vagrancy under section 3.

But the weakness of the Bill was in its provisions regarding the removal of European vagrants from India.

He thought that these provisions were defective, and that the object in view would have been preferably obtained by allowing compulsory deportation,—

1*stly*, because he did not share his hon'ble friend's confident anticipation that the persons whom it was desirable to remove from the country, would readily enter into contracts, to the breach of which criminal penalties were attached for their own deportation. For he always understood the main arguments against the legislative imposition of liability to criminal penalties for the breach of a civil contract to be, that there was danger of the person who would be made liable to criminal penalties not having been altogether a free agent in the formation of the contract, and that in no other case would the penalties become operative, as no person would willingly enter into a contract, for the breach of which he could be brought within the pale of the criminal law.

2*ndly*, he thought that Part IV was, as a piece of legislation, open to the criticism that it empowered certain parties to perform certain acts which they were, in the absence of such provision, under no natural legal disability to perform. For no legislative action was needed to enable a person to enter into a contract with the Government for his own removal, or to authorize the fulfilment by the Government of its part of the contract by removing such person in accordance with the conditions of the engagement entered into with that object.

Mr. Cockerell was not unmindful of the legal difficulties stated by his learned friend when he moved the reference of the Bill to a Select Committee, in the way of compulsory deportation. But he thought that those diffi-

culties amounted to no more than this, that, although the Legislature could enact provisions for the deportation of any person, it was powerless to provide for his protection when he had been removed to a greater distance than three miles from the coasts of India, and the reasoning, as he understood it, deduced from the defect of our legislative powers, was that it was hardly equitable to force a person into a position in which our laws could not avail for his protection.

MR. COCKERELL argued in regard to this consideration that the reasons held to justify any special legislation in the direction of this Bill, would afford a sufficient justification of the more complete measure of compulsory deportation. We had to deal with a social and political evil of an exceptional character which could only be satisfactorily met by an exceptional remedy.

At the same time, MR. COCKERELL thought that there was this to be said in favour of the standing provisions of the Bill in this matter, that they exhibited the extreme moderation of the policy of the Government towards the European vagrant class in this country, and that if they failed in achieving the desired object, their failure would be a sufficient excuse for immediate recourse to the stronger measure which he would have been prepared to adopt.

The Hon'ble MR. MAINE expressed concurrence with his hon'ble friend that the measure would greatly depend for its success on the administrative rules to be made by the Governor General in Council. It was also true that, from the wandering habits of the class, there might be occasional difficulty in bringing to justice European offenders not yet declared vagrants, but the difficulty was no greater than attended at all times the apprehension of this description of persons. But in his remarks on the system of agreements recommended by the Committee, Mr. Cockerell had imperfectly appreciated the legal consequences of the defect in the legislative power of the Council. The point was that the Indian Legislature could not legislate for the high seas. No doubt one consequence of this was that it could not provide for the comfort and kind treatment of the vagrant during his voyage home. But there was a more formidable difficulty behind. The Indian Legislature could not make legal the detention of the vagrant against his will so far as regarded the high seas. An Indian enactment would be an authority to the master of a ship to receive a vagrant on board against such vagrant's will. It would also be an authority to detain him against his will while in Indian waters. But it would cease to be an authority or justification so soon as the ship passed beyond Indian waters, and it was impossible to say that the ship-master might not be liable to a civil action in England and to damages. No such difficulty arose when the vagrant

had agreed to be deported, and this was the reason why this expedient was adopted.

Major-General the Hon'ble SIR H. M. DURAND wished to know, in regard to section 17, whether it was intended that persons of European extraction, who had been born in India and had become vagrants, should necessarily be deported?

The Hon'ble MR. MAINE said, that there was no legal obligation thrown by the measure on the Local Governments or their officers to enter into these agreements. Unquestionably there would be certain vagrants whom it would ordinarily be improper to remove from India; but here, again, an administrative rule of the Governor General in Council would be issued to point out what discrimination was to be made between the different classes of persons coming under the measure.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved,—

That in section 16, lines 10 and 11, for 'twenty-nine,' the word 'thirty' be substituted.

He said that this alteration was needed to correct an inadvertency in the cross-references contained in section 16.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved,—

That in section 19, line 1, for 'proceed,' the words 'accompany a police officer to or to appear' be substituted, and that in line 5, the words 'by a police officer' be omitted.

This amendment, he remarked, involved a mere verbal alteration designed to make the language of the section correspond more closely with that of section 4, to which it referred.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved,—

That after section 19, the following clause be inserted:—

Assaulting police.

"And any person who, when required under section four to accompany a police officer to or to appear before a Magistrate of Police or Justice of the Peace, commits an offence punishable under section 353 of the Indian Penal Code, may, whether he be or be not an European British subject, be tried by a Magistrate for such offence."

He observed that without the proposed additional clause, an European British subject, who assaulted a police officer when in the discharge of his duty under section 4, and thereby committed an offence punishable under

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section 353 of the Indian Penal Code, would be triable for such offence only by a High Court, unless the assault was so slight as to be sufficiently punishable under the powers exercised by a Justice of the Peace under the English Statute.

We could not disguise from ourselves that, by section 4 of this Bill, we were about to impose upon Native police officers a perilous responsibility, the due discharge of which was likely to be attended with great personal hazard; for the European loafer was unquestionably apt to prove dangerous to deal with when you attempted to exercise what to his apprehension might seem an unwarrantable interference with his personal liberty, and MR. COCKERELL thought that there was good ground for anticipating that the discharge of their duty under this section would subject police officers to frequent assaults. In such circumstances, it seemed incumbent on the Legislature to make such provision as was practicable for their protection. In all countries, the policeman in a personal conflict with disturbers of the public peace was held to have this advantage over his adversary, that he was fighting under the special protection of the law. Such protection could only be efficiently afforded when redress for the injury sustained by the upholder of the law was attainable on the spot where the injury was committed, or at least as near thereto as might be practicable.

Cases of this kind would, as he had said, be probably of frequent occurrence, and the necessity for their trial by the distant High Courts would entail the constant risk of evidence breaking down and the offenders escaping punishment, the result of which must be the discouragement of the Native police for the efficient discharge of their duty under the Act; and yet that police was the chief agency relied on for its effective operation.

Moreover, the trial of such cases by High Courts would entail a very considerable expense on the State, and MR. COCKERELL apprehended that without this the working of the Act might prove too costly. For these considerations he proposed to make *all* persons charged with an assault on a police officer, in the discharge of his duty under section 4, amenable, as regards their trial for such offence, to the provisions of the Code of Criminal Procedure.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved,—

That in section 24, the words 'and if he be of opinion that such person is without sufficient means of subsistence' be omitted.

He moved the omission of these words, because, in his opinion, they involved mere surplusage; for, to be able to form any opinion on the matter

referred to, the Magistrate, before whom the released prisoner is placed, must make some such summary enquiry as was contemplated in section 5, and if, as the result of such enquiry, the converse condition to that described in these words were established, then, with reference to the conditions of vagrancy described in section 3, the further action of the Magistrate under the latter part of section 5 and section 6 would be necessarily stayed. On these grounds, he held the retention of these words to be unnecessary.

The Motion was put and agreed to.

His Excellency the COMMANDER-IN-CHIEF said that, since the Select Committee had signed their Report, his attention had been drawn to the fact that section 31 did not quite complete the idea under which it was framed. The object of that section was to attribute a certain limited responsibility to any person, firm or company who might import or land servants in this country, and in consequence of the early discharge of such servants throw them into a state of vagrancy.

It might be in the recollection of His Excellency the President that he (the COMMANDER-IN CHIEF) had been more than once addressed by the Government of India in his executive capacity on the fact that many large companies and firms *do* recruit their establishments from the ranks of the British regiments serving in India, with the consequence of the increase of vagrancy.

The COMMANDER-IN-CHIEF did not wish to attach any blame to the course pursued by these companies. It was not forbidden by the law, and, although it had thrown very considerable expense upon the Government of India, it must be admitted there were countervailing advantages. But it became a very serious consideration when this practice was a cause of increasing vagrancy in this country; and if it be admitted that the companies and firms alluded to incurred a certain liability when they landed men whom they did not ultimately retain in their service, and who consequently became vagrants, he could not see any reasonable distinction between that and the vagrancy caused in like manner by recruiting their servants from the army in India.

Two instances had come before him very recently; indeed, since the Select Committee sat. The first was that of a great mercantile company which refused to pay the return passage to England of one of its servants. A petition was lately addressed to His Excellency, which he had forwarded to Government. In it the petitioner stated that he had been for several years in the service of this country, having been originally in the army, and he

begged of the Government to grant him a passage to England because the company declined to give him one.

The other case was that of a soldier who applied for his discharge with a view of an engagement with a Railway Company.

His commanding officer enquired whether the Railway Company would guarantee him his passage to England; but it appeared no such guarantee could possibly be given under their rules as they had some regulation according to which the pay of the Railway servant suffered a deduction of twenty rupees a month until the amount of his passage money to England was saved. His Excellency did not know whether in any other companies such a precaution is taken; but still, notwithstanding these precautions, the country was liable to suffer on account of this man if he should take to evil courses; and the cost of sending him to England, though he had been taken from the service of the Crown for which he was brought to this country, would fall upon the Government of India. If this soldier committed an offence which, according to the rules of the Railway Company, involved his discharge within a month after he has entered the company's service, we had the result that, having lost his military profession, he was thrown upon the country without any profession or trade whatever. He was probably not acquainted with any handicraft by which he could obtain the means of subsistence, and therefore he must become a beggar and a vagrant within the meaning of this Bill. It appeared to His Excellency that those who made such engagements with persons on this condition, and thus contributed to the manufacture of vagrancy, should incur the responsibility of paying their passage to England, and he did not see any reason why the section should not be amplified in order to take in the probable results of such engagements. His Excellency therefore moved that the following be substituted for section 31:—

Liability of importers of Europeans or employers of soldiers becoming vagrants.

Whenever any person of European extraction lands in India,

or, being a non-commissioned officer or soldier in Her Majesty's army, leaves that army in India,

under an engagement to serve any other person, or any company, association or body of persons in any capacity,

and becomes chargeable to the State as a vagrant within one year after his arrival in India or leaving the army, as the case may be, then the person, or company, association or body, to serve whom he has so landed in India or left the army shall be liable to pay to the Government

the cost of his removal under this Act, and all other charges incurred by the State in consequence of his becoming a vagrant.

Recovery of charges.

Such costs and charges shall be recoverable by suit as if an express agreement to repay them had been entered into with the Secretary of State for India in Council by the person, company, association or body chargeable.

The Hon'ble MR. MAINE would, 1*st*, observe that under His Excellency's amendment the liability would only last for a year, and 2*ndly*, that the state of the case would be much changed by this Bill becoming law. Hitherto, when a company induced a soldier to leave the Queen's service, and then dismissed him after brief employment, the general community was not directly the worse for what had been done. But after the enactment of this measure, the man might, and probably would, become chargeable to the State; and MR. MAINE could not see why the general tax-paying body should pay for the company's mistake. He should not oppose His Excellency's amendment, which he thought just and reasonable.

The Motion was put and agreed to.

The Hon'ble MR. MAINE then moved that the Bill as amended be passed.

The Motion was put and agreed to

GÁRO HILLS BILL.

The Hon'ble MR. COCKERELL presented the report of the Select Committee on the Bill to remove the Gáro Hills from the jurisdiction of the tribunals established under the general Regulations and Acts.

The Council adjourned to Friday, the 24th September 1869.

WHITLEY STOKES,

Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 17*th September* 1869.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Simla, on Friday, the 24th September 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. M. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

Major-General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble B. H. Ellis.

The Hon'ble F. R. Cockerell.

Colonel the Hon'ble R. Strachey.

THE HON'BLE H. S. MAINE.

His Excellency THE PRESIDENT said—

"I wish to give notice that, at the first meeting of the Council at Calcutta, I shall move a resolution expressive of the high sense which his colleagues entertain of the long, faithful and valuable services of the Hon'ble Henry Sumner Maine; and I shall ask the Council to concur with me in expressing regret for his departure, and sincere wishes for his future welfare and happiness."

GÁRO HILLS BILL.

The Hon'ble MR. COCKERELL moved that the report of the Select Committee on the Bill to remove the Gáro Hills from the jurisdiction of the tribunals established under the General Regulations and Acts be taken into consideration. He said that the scope of the Bill was somewhat enlarged by the amendments proposed by the Select Committee. As originally framed, the Bill contemplated only the suspension, within the territory inhabited by the Gáro

and other hill-tribes, of the jurisdiction of the ordinary Courts and the laws relating to procedure; but it was represented to the Committee that these provisions might advantageously be extended to the temporary abrogation of all laws within that territory. There could be no doubt that all the revenue laws, and more particularly Acts, imposing some special form of taxation, as for instance the Certificate or Income Tax Acts, were wholly inapplicable to the circumstances of these tribes. In fact, whenever any fresh legislation of the latter description took place, the Local Government was compelled to move the Government of India to exempt the inhabitants of the territory to which this Bill referred. And although the provisions of the criminal, were generally more applicable than those of the fiscal, law to the condition of these people, yet the punishments fixed by the Penal Code for certain offences were not, in many cases, the best adapted to such offences when committed by a semi-barbarous race. For example, murder, which amongst civilized people was regarded as the most heinous crime, and for which the criminal law provided extreme penalties, would, when committed in pursuance of blood-feuds between rival hill-tribes, and viewed by the extenuating light of the obligations imposed by their savage customs, assume a much less heinous character, and might be more suitably dealt with by the infliction of a penalty widely differing from that fixed by the law.

Moreover, this extension of the scope of the Bill went no further than the provisions of Regulation X of 1822, which this Act was designed to supersede, and was not consequently calculated to effect any alteration of the existing status in that portion of the Gáro Hills in which that regulation was in force.

Provision had been made, therefore, in the amended Bill for the cessation of the operation of all the Laws and Regulations within the territory comprised in the present measure. At the same time, a discretionary power was vested in the Local Government of extending to such territory, from time to time, so much of the existing law as might seem suitable to the circumstances of the inhabitants.

The clause excepting from the operation of the proposed Act all cases pending at the time of passing it, had been excluded from the amended Bill, as, in the opinion of the Committee, the policy of the present legislation is as applicable to such cases as to those which might arise after the Act comes into operation.

It was further proposed to provide for the extension of the Act by the Local Government to so much of the Khási Hills as formed part of British territory, and to the Nágá and Jintíá Hills.

When MR. COCKERELL asked leave to introduce this Bill, he explained, as the reason for rescinding the enactment from which the High Court derived certain jurisdiction within the Khási Hills, that in fact those hills were not included in British India. That statement had reference to the greater part of that territory, but there was a small portion, he believed a very small portion, of those hills which was annexed to British territory.

The degree of civilization attained by the people inhabiting this tract, or by the Nágás, or the inhabitants of the Jintíá Hills, was scarcely greater than that of the Gáro tribes; and the system of administration of justice adapted to the circumstances of the people was as crude in the former as in the latter case.

The Motion was put and agreed to.

The Hon'ble MR. COCKERELL then moved that the Bill as amended be passed.

The Motion was put and agreed to.

The Council then adjourned *sine die.*

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

SIMLA,
The 24*th Sept.* 1869.

Office Supdt. Govt. Printing.—No. 136 L. D.—21-11-73.—50.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament, 24 & 25 Vic., Cap. 67.

The Council met at Government House on Friday, the 12th November 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K.P., G.C.S.I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C.B., K.C.S.I.

The Hon'ble John Strachey.

The Hon'ble F. R. Cockerell.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey.

The Hon'ble F. S. Chapman.

The Hon'ble J. R. Bullen Smith.

The Hon'ble Mr. Chapman and the Hon'ble Mr. Bullen Smith each took the oath of allegiance, and the oath that he would faithfully discharge the duties of his office.

MR. H. S. MAINE.

HIS EXCELLENCY THE PRESIDENT moved the following Resolution:—

"This Council, entertaining a high sense of the conspicuous ability displayed by Mr. H. S. Maine during the time that he held office as Law Member of the Council of the Governor General, hereby expresses to him its cordial thanks for his long, faithful and valuable service—its deep regret at his departure, and hearty wishes for his future welfare and happiness."

HIS EXCELLENCY said:—

"The duty I propose to ask the Council to perform on this our first meeting after reassembling in Calcutta is at once a painful and agreeable one. It is painful because we are united to record publicly our regret at the departure from among us of an able and most valuable colleague—agreeable because it is always gratifying to be allowed to participate in a recognition of private worth and public service.

"Gentlemen, the distinguished man who has lately ceased to be a member of our body, from a very early period of his life, exhibited evidences of that capacity which enabled him in after years to perform so much good service to his country.

"During his University career he was one of the first classical scholars of his day. His proficiency in the study of Law caused him to be elected Regius Professor of Civil Law in the University of Cambridge, and he afterwards discharged with much success the duties of Reader on Jurisprudence in the Middle Temple.

"He rapidly rose to eminence as a lawyer, but more particularly as a jurist, and the lectures which he delivered, both as Cambridge Professor and also as Reader in the Middle Temple, formed the basis of that remarkable work which is now esteemed, not only in England, but on the Continent, as one of the standard books on Jurisprudence, namely, his work on 'Ancient Law.'

"Such was his early career.

"In 1862 he was nominated by the then Secretary of State, Lord Halifax, as Law Member of the Council of the Governor General.

"He came to India in that year, and with the exception of six months till the other day, he laboured continuously and industriously in the arduous duties of his office.

"Although, when he came to India, the great Acts which form the foundation of modern Indian Written Law had been passed, and the Penal Code and the Codes of Civil and Criminal Procedure, which were the work of many able and distinguished men, were in existence, yet, still, under Mr. Maine's auspices was completely developed that *even* continued course of annual well-considered legislation which has, I believe, conferred much benefit upon this country and the necessity of which is now recognized by all classes in India.

"Among the 209 Acts which were placed on the Statute-book during his tenure of office, the great majority of which were actually drawn under his personal supervision, and all of which were, more or less, carefully criticized and considered by him, are to be found measures which embrace every important branch of Indian polity.

"There are to be found among them many measures which deal with the most important questions of general and local taxation, with the administration

of justice, both civil and criminal, and, on more than one occasion, with the organization of the Police of the country.

"Among them are to be found Acts which deal with difficult and complicated questions connected with the tenure and improvement of land, with our works of irrigation and those of inland navigation.

"Many statutes were passed under Mr. Maine's direction for the development of our commerce and trade, and on social subjects important Acts were inaugurated by him, which deal with the difficult questions of Marriage and Divorce and with Emigration and European Vagrancy.

"It is of course to be expected that, in a country like this, where free discussion in the Press and otherwise is generally practised, some difference of opinion may exist as to the wisdom and prudence of some of his measures, but no one will deny that, to the consideration of the importent questions with which he had to deal, Mr. Maine invariably brought profound legal knowledge, much ingenuity, great originality, latterly vast experince and an amount of judicial fairness that was very remarkable.

"In the advocacy of those measures, as far as I could judge, he exhibited all the keenness of the Pleader combined with the impartiality of the Judge, and by the gift of eloquence and facility of expression with which he was endowed, he was enabled to place before his colleagues and the public sound views and wise maxims in the most attractive form.

"The departure of such a man from among us must be looked upon at any time as a great public loss; but it is peculiarly so at this moment, in such an epoch in the history of the country as that at which we have arrived.

"We are now emerging, I may say have almost emerged, from what has been called a system of discretionary government.

"In the early days of our rule, the system of discretionary government was to a great extent inevitable and was necessarily practised throughout a large portion of this empire. But now, as civilization has advanced, as our power has been consolidated, as our authority is thoroughly established and intelligence is becoming more rapidly developed, it follows, almost as a matter of course, that our rules must be conducted, according to the forms and procedure of Written Law, and of statutes based on those principles which wise men of every age, class and creed have thought best for the good government of mankind.

"Far be it from me to deny that discretionary government and rule by personal influence have not performed a great mission in this country. It has great advantages, and I would go further, and say that even still in some districts in India the retention of it may for some period be a necessity; but no one can deny that all Governments in civilized countries, to be strong, uniform and just, must be administered according to those published statutes and well-know laws which in every country are considered by the wisest and best of men to be indispensable to freedom of action and of thought and to the security of property and life.

"In the great work of the education of the people Mr. Maine invariably took a lively and practical interest.

"In all the discussions that took place during his tenure of office on that interesting and all-important question, his opinions, delivered with great authority and weight, were esteemed and valued by all classes in this country, and his eloquent addresses during the three years that he filled the office of Vice-Chancellor of the Calcutta University are not among the least of his public services and will long be remembered by the youths of Bengal.

"But it was not only as a legislator and a philanthropist that Mr. Maine was enabled to perform great service to the State. In the Executive Council of the empire he was always found a wise councillor, an impartial adviser, and a minister of originality, sagacity, and resource.

"In common with the rest of his colleagues, I deeply deplore his loss, for I always found him ready to labour on any subject or in any matters, even though not directly connected with his Department, in which his assistance was required; and I am sure my colleagues will agree with me that his genial temper, his deference to the opinions of others, his modesty and forbearance, and the interesting way in which he always advanced or elucidated his opinions, made a discussion with him on difficult and important matters as agreeable as it was instructive.

"He has departed from among us, but we may hope that, as he is still young and strong, so much knowledge and so much experience will not be lost to India. He never informed me of his intentions as to his future career. I know little of his aspirations or of his wishes. It is quite possible that, after so many years of labour in this climate, he may naturally wish for comparative repose. But I am sure I only express the unanimous opinion of this Council in saying that, whether it be in the Senate, the Council, or on the Judicial Bench at Home, the Indian public will still hope for a continuance of those services

from which it has already so much benefited; and we may be sure that, whatever sphere he may select for active exertion, the influence of his great experience, learning and eloquence will be strongly felt and will ever be exercised for good.

"Gentlemen, I am aware how inadequate are the terms in which I have endeavoured to recommend this Resolution to your consideration, and that what I have said is hardly worthy of the conspicuous public services I have endeavoured to describe. I feel that anything that may be spoken of him to-day will add little to his character or to his fame; but we may be content to know that the best and most lasting records of his long and able service will be found in those wise laws which under his auspices were placed on our Statute-book, in the eloquent addresses delivered in this chamber, which by the happy intervention of the Press have been preserved and given to the public, and in those numerous and able documents which have issued from his pen and which now comprise so valuable a portion of Indian Political Literature."

The Hon'ble Mr. Cowie :—"My Lord, I have much pleasure in seconding the Resolution which Your Lordship has so ably introduced. I have had the good fortune to hold a seat in this Council with Mr. Maine under three successive Viceroys, and while I would leave to others more competent than myself to describe his great eminence and talent as a jurist, I readily bear testimony to his eloquence, his industry, and his unfailing courtesy. The two latter qualities always accompanied him to the Select Committee room, where, as Your Lordship knows, the practical part of this Council's work is chiefly carried on.

"An opinion was once entertained in some quarters, both here and in England, that Mr. Maine was too eager for legislation and for the reform of existing laws. I confess that at one time I was inclined to share that opinion, but I am bound to say that, in a minute dated some months back, he completely and triumphantly refuted the charge. During his occupancy of the distinguished post of Legislative Member of this Council, the following important measures specially affecting commerce and trade have become law :—

Act VI of 1864, consolidating and amending the law as to Sea customs:

Act III of 1865, defining the rights and liabilities of common carriers:

Act V of 1866, for summary procedure on Bills of Exchange, guarantees, acceptances, etc., and assignment or rights under marine and fire policies:

"Act X of 1866, known as the Companies' Act, and, lastly, Act XVIII of 1869, the General Stamp Act.

"My Lord, the bankers, merchants, and traders of India are all, more or less, indebted to this Council for the valuable laws which I have thus briefly enumerated; but they are specially so indebted to Henry Sumner Maine, and I feel honoured in being allowed thus to second the Resolution which bears testimony to his great merit and his most successful career.

"I heartily concur in Your Excellency's hope that a brilliant career may yet be open to him in his native land."

The Hon'ble Mr. Strachey:—"I feel, my Lord, that I cannot, as a member of this Government, remain altogether silent, when this Council is recording its admiration, its gratitude, and its regrets, on the departure of a wise and most accomplished statesman, who, for the last seven years, has been the most brilliant ornament of our Indian legislature.

"When, my Lord, Mr. Maine first came to India, the popular belief did not want expression,—perhaps, indeed, it is a professional belief also,—that practical ability can hardly co-exist with intellectual refinement and devotion to the study of the abstract principles of jurisprudence. I suppose that no more complete contradiction to this belief was ever given than that which has been given to it by Mr. Maine's career in India. Mr. Máine has not only been a great author and jurist, but a great legislator and statesman. More fortunate, in this respect, than some of his predecessors in the philosophy of law, Mr. Maine became the head and the guide of the practical legislation of a great empire.

"I will not, my Lord, dwell on the details of Mr. Maine's services to Indian legislation, because this has been done already by Your Excellency and by my Hon'ble friend Mr. Cowie. The few remarks which I propose to make will be of a more general character.

"I believe, my Lord, that no competent and candid person can deny the general excellence of late Indian legislation It has been excellent in substance and excellent in form, and it is not too much to say that it will soon be true of India, that there is no country in the world which possesses more admirable laws. The simple language and scientific arrangement of our recent Acts make them models of which any legislature might be proud.

"In one of those admirable addresses to the Calcutta University to which Your Excellency has referred, Mr. Maine said that if he were asked to give a

rough and popular definition of law to persons quite ignorant of it, he should say that law was common sense. 'A lawyer,' he said, 'cannot do without technical rules any more than a sculptor or a painter; but still it is universally true that a disposition to overrate technicalities, or to value them for their own sake, is the characteristic mark of the journeyman, as distinguished from the artist. A very technical lawyer will always be a third-rate lawyer.'

"I think that these remarks of Mr. Maine very well describe the character of recent Indian legislation. It has been the expression of common sense, divested to the utmost possible extent of all those worthless technicalities which so long in this country, even perhaps more than in England, usurped the place of rational law. It would be hard to exaggerate the benefit which has been conferred upon India by these excellent enactments, which everybody can understand, and which have superseded the cumbrous and contradictory mass of judge-made law which our Courts not long ago were forced to administer. Although there may not be actually less litigation, its character has been simplified. There are fewer disputes regarding the interpretation to be put upon the law, fewer costly references to counsel and attorneys, fewer law-suits wasting the time and labour of the Judges, the money and the patience of the litigants. If, even in England, the maxim 'Ignorance of the law excuses no one' renders it desirable that the statutes should be clearly drafted and intelligibly arranged, how much more is this the case in India, where the bulk of the population is ignorant of our language and our modes of thought, and where competent translators are found with difficulty.

"We cannot acknowledge too fully the value of the work which was thus performed by Mr. Maine. In saying this, however, there is one thing which I must not forget, for it is one that Mr. Maine himself was always the first to declare. I refer, my Lord, to the obligations which we are under to one whose services we are still fortunate enough to command in the Legislative Department of this Government, the learned and accomplished Secretary to this Council, Mr. Whitley Stokes. While we remember the admirable expositions made by Mr. Maine in this Council of so many important laws, we must not forget how much is due to Mr. Stokes for making the laws themselves models of terseness and lucidity. In speaking of the character of recent Indian legislation, it would be difficult to give to Mr. Stokes greater acknowledgments than he deserves.

"But, as your Excellency has observed, legislation was only one part of Mr. Maine's Indian services. For the last seven years he has been a working member of the Executive Government, taking at all times an active part in

the administration. Owing to the peculiar, and, in my opinion, unfortunate constitution of our Government, a member of the Executive Council has no definite or separate official responsibility. He may originate or may obstruct measures that closely affect the interests of millions, yet the public will know little of him beyond the fact that he belongs to that somewhat mysterious body, the Governor General in Council. And so it happens that, although Mr. Maine has been concerned in almost every measure of importance, affecting the civil administration of the country, which has come before the Government of India for several years past, it is difficult for the public to learn specifically what his actual share in those measures was. But Your Excellency and my Hon'ble colleagues in the Executive Council well know how great a power in the State Mr. Maine has really been, and how active a part he has taken in the practical work of the Government of India.

"Although, my Lord, I cannot now attempt to detail the many claims which Mr. Maine possesses to our grateful and admiring recollection, there is one other branch of his public services in India to which Your Excellency has referred, and which I must briefly notice,—the services which he performed as Vice-Chancellor of the Calcutta University. That the author of 'Ancient Law' was no less eminent for his literary acquirements and ability than for his knowledge as a jurist, it is hardly necessary for me to say; and his scholastic experience, his learning, and his broad and sound views as to the true objects and scope of study will, I am convinced, be found to have produced a lasting effect on the progress of education in this country. The key-note of those brilliant addresses to the Calcutta University which signalized Mr. Maine's tenure of office was this:—That the object of all study is to attain a knowledge of the truth; that truth, whether in relation to the external world and its phenomena, or to human nature and society, and the feelings and influences under which they act, must conform to the same general conditions; and that the teaching of all true science, to whatever it be applied, is (to use Mr. Maine's own words) 'continuous sequence, inflexible order, and eternal law.' He warned us, in eloquent language, that the genuineness of knowledge is the one essential consideration, and that the merely literary form in which knowledge is conveyed is in itself a small matter. Never, he maintained, under any guise of oriental culture or otherwise, must we teach that which is not true. Attention to these fundamental principles has nowhere been more required than in India and at no time is it more required than at present. By no one have these principles been more clearly or more forcibly enunciated than by Mr. Maine, and it will be well for the cause of education in India if we follow his weighty counsels.

"But, my Lord, while we regret Mr. Maine's departure, we may, I think, have the satisfaction of feeling that his career, unlike that of many of the distinguished men who leave India, is not closed. England is at last beginning to recognize the evils of her shapeless legal system, and to see the necessity of digesting, and ultimately of codifying, that enormous mass of statutes, precedents, dicta, and rules of practice which constitute the bulk of her law. In helping on this work, Mr. Maine's learning and experience would be especially valuable.

"There are other ways in which he may render services perhaps still more useful to his science, to England, and to India.

"In his 'Ancient Law' Mr. Maine has shown that the inductive method is the only way to attain clear notions as to the origin of those elementary legal conceptions which are incorporated into our social system; and the primeval institutions and customs of India which have been handed down, almost unchanged, to the present generation—such as the village community, the undivided family, the practice of adoption taking the place of testation—furnished him with admirable subjects for the application of that method. The extended knowledge and experience which Mr. Maine's residence in India has given him will enable him to pursue with increased power his scientific researches, and we may hope that he will be able, from the chair which he is expected to fill at Oxford, to impart to the youth of England, not only correct principles of jurisprudence, but to extend that intelligent and unselfish interest which the best minds in England are beginning to take in this country and its history and institutions, and to diminish the contempt and dislike which, as between nations, are almost always due to ignorance alone. We may hope, too, that Mr. Maine's teaching may have a yet wider range; that the beneficial influence of his scientific and philosophical mind may extend beyond questions affecting the conditions of any single human society, or the relations of two countries such as England and India, and may reach that almost unbroken field of international law to which he has already given so much of his attention. If there be any man able to fix the true principles of this most important of all branches of jurisprudence, that man is Mr. Maine.

"It would be a worthy conclusion to his labours to lay the foundations for that complete respect for the authority of such law which Whewell reckoned among the most hopeful avenues to that noble ideal, a perpetual peace; 'the most hopeful,' he says, 'because along this avenue we can already see a long historical progress, as well as a great moral aim.'

"But, my Lord, independently of the work which lies before Mr. Maine as a jurist and a philosopher, I hope that we may find that he has not altogether abandoned in England that active political life which he has been living here. The present seems to be the very time for a statesman like Mr. Maine to turn to good account his practical Indian knowledge. England is now entering on the consideration of matters affecting the condition of the people, the rights of landlords and tenants, and all the difficult questions connected with property in the land. The subjects that are now being discussed in regard to Ireland seem to us here strangely like those over which Indian statesmen have been labouring for the last three-quarters of a century. I believe that there is very much that might usefully be told to the people of England regarding the experience that has been gained in India, and there is no man that could speak with greater knowledge and authority on such matters than Mr. Maine.

"However all this may turn out, this is certain, that not only every member of this Council, but all the thinking public of India, will heartily agree in the Resolution which has now been moved by your Excellency, in token of the regret which we feel at Mr. Maine's departure, and of the hope that his career in the future may be as distinguished and as useful as it has been in the past."

Major General the Hon'ble Sir HENRY DURAND said that, in the spirit of the Resolution before the Council, he wished to say a few words on a point which was adverted to by the Hon'ble Mr. Strachey, and which might not be well known by the public—in fact, could not be well known—namely, the great use of which Mr. Maine had been during the administrations of Lord Elgin and Sir John Lawrence; and His Excellency the President knew best, in connection with his own administration, the immense service of which Mr. Maine's opinions were in that particular department which is called international law. Questions of international law in this country did not come before us in that simplicity of form in which they came before European nations of co-equal powers and rights. His Excellency was quite aware how nice and delicate were the points of such law which arose here between the dependent States of this empire and the supreme authority. SIR HENRY DURAND could not enter into any detail by way of exemplification: the cases were so numerous that it would be difficult to select an example. Yet he might say that Mr. Maine was ever ready, at all times, to give the fullest consideration and the best advice with reference to these questions. He felt that it was due to Mr. Maine to say that he was something

more, and in fact a great deal more, than an ordinary Jurist. As a jurisconsult having to deal with most complicated and difficult questions, there was no man more fitted than Mr. Maine to solve the problems of international law which constantly came up for decision under the administrations during which Mr. Maine was a member of the Government; and the obligation of the Government to Mr. Maine on account of the part he had taken in that large and anomalous class of questions, was really almost beyond calculation. SIR HENRY DURAND would not take up the time of the Council by saying more on this part of the subject; he felt from what had fallen from the Hon'ble Mr. Strachey and His Excellency the President that it was quite unnecessary for him (SIR HENRY DURAND) to do anything more. Still he was anxious that the great ability and value of Mr. Maine as an international jurisconsult, and the obligations of the Government to Mr. Maine in that respect, should not be allowed to pass without the amplest recognition.

The Hon'ble MR. TAYLOR said that, although he was unprepared to follow his Hon'ble colleagues at any length in support of the Resolution which His Excellency had proposed to-day, he could not allow the occasion to pass altogether in silence. He had enjoyed the privilege of being associated with Mr. Maine in the Executive Council for a period of nearly five years. He had thus been in a position very thoroughly to estimate the value of the services of such a man in the Supreme Government of India; to appreciate his talents, his industry, his genius and his worth. He desired then simply to say that he joined most heartily in the well-deserved tribute of praise and admiration which His Excellency had so eloquently paid to their late distinguished colleague, and in the expression of regret for the great loss the Council had sustained by Mr. Maine's departure from India.

The Motion was put and agreed to.

SALT (MADRAS AND BOMBAY) BILL.

The Hon'ble MR. STRACHEY, in moving for leave to introduce a Bill to enhance the price of Salt in the Presidency of Fort St. George, and the duty on Salt in the Presidency of Bombay, said the circumstances under which he asked for leave to introduce this measure were so well known to the Council and to the public that it was hardly necessary that he should now enlarge on them. The Government of India came to the conclusion that it was for financial reasons necessary to increase the duties on salt in Madras and Bombay. As the legislature was not at that time sitting, it became necessary for His Excellency to exercise the power given to the Governor General by the Indian Councils' Act, and to authorise temporarily, by an Ordinance, that the increased duty should be at once put in force. It was at the same time stated publicly

that a Bill would, with the least possible delay, be brought into the Legislative Council to substitute for that Ordinance the regular form of legislation. That intention would be fulfilled if the present motion was carried, and the Council would remember that legislation on this subject was essential, because, under the Indian Councils' Act, an Ordinance made by the Governor General must expire at the end of six months It would be more convenient to defer until next week any remarks MR. STRACHEY might desire to make regarding the policy of this measure. He hoped that at their next meeting the Hon'ble Sir Richard Temple would be able to introduce the Bill referring to the Income Tax, and MR. STRACHEY thought that would be the proper opportunity of also discussing the measure which he now asked leave to introduce.

The Motion was put and agreed to.

ALIMENTARY SALT (N. W. P., &c.) BILL.

The Hon'ble MR. STRACHEY also moved for leave to introduce a Bill to provide rules for the manufacture, storing and sale of alimentary Salt in the North-Western Provinces, the Panjáb, Oudh and the Central Provinces. He said the Council was already aware that the Government of India some time ago came to the conclusion, with the approval of the Secretary of State for India, to sanction experimentally the manufacture of salt in Oudh. A similar manufacture might probably be soon introduced in certain parts of the North-Western Provinces, and perhaps also at some future time in the Central Provinces and the Punjáb. It was found that legislation was necessary, for although the Acts in which the law on the subject was contained prohibited the unsanctioned manufacture of salt, they did not enable the Government to prescribe rules respecting the mode of making, storing and selling that article. He need not to-day occupy the time of the Council in explaining at any length the reasons which had led the Government of India to allow the local manufacture of salt, but he hoped at a future stage of the Bill to take the opportunity of giving some account of the policy which the Government of India proposed to follow in regard to this very important matter.

The Motion was put and agreed to.

The Council then adjourned to Friday, the 19th November 1869.

WHITLEY STOKES,

Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,

The 12th November 1869.

Office Supdt. Govt. Printing.—No. 194 (p) L. D.—20-12-93.—100.—C. P.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 19th November, 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Honour the Lieutenant-Governor of Bengal.

The Hon'ble G. Noble Taylor.

Major-General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey.

The Hon'ble F. S. Chapman.

The Hon'ble J. R. Bullen Smith.

His Highness Sarámade Rájáhác Hindústán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur, of Jaypúr, G. C. S. I.

His Highness the Mahárájá of Jaypúr made a solemn declaration of allegiance to Her Majesty, and that he would faithfully fulfil the duties of his office.

INDIAN INCOME TAX ACT.

The Hon'ble SIR RICHARD TEMPLE introduced the Bill to enhance the duties leviable under the Indian Income Tax Act, and moved that it be referred to a Select Committee with instructions to report in a week. He said—

"My Lord, I have now to introduce the Bill to enhance the duties leviable under the Indian Income Tax Act. In introducing this measure, I am not about to make any regular Financial Statement: that I shall defer till I bring forward the regular annual Budget in due course. In the meantime I propose to state, as succinctly as possible, the particular facts and figures which necessitate the measure of which I am in charge. I may premise by calling to the recollection of the Council that, during my absence in England, the

finances have been administered by my Hon'ble colleague Mr. John Strachey. The mention of his name, and the knowledge which the Council have of his high capacity, will be the best possible warrant and guarantee to the Council that the recent financial administration has been marked by vigour and firmness, and that every effort has been made to avert the deficit, which cannot be altogether averted without the introduction of the measure now proposed, wherein I am fortunate in having his entire concurrence and support. The facts on which this proposal is based have been already stated in the published despatch and resolution of the Government of India, bearing date the 20th September last. It will suffice that I now recapitulate briefly the facts and figures there brought out.

"It will be in the recollection of the Council that, when I made the Financial Statement in March last, the deficit of 1868-69 was estimated at £970,471, or, say, in round numbers one million; but the actual statement has shown that the deficit was £2,273,362, or, say, in round numbers 2¼ millions: thus the actuals exceeded the regular estimate by £1,302,891, or, say, in round numbers 1⅓ million. Now, how did this excess deficit arise? Partly from a shortcoming of revenue, but chiefly by an excess of expenditure. The revenue, according to the regular estimate, was to be £49,288,700, or in round numbers 49¼ millions, but the actual revenue has turned out to be £49,070,242, or, say, 49 millions, the deficiency thus being £218,458: and so far the actual has been tolerably close to the regular estimate in respect of revenue, the difference less being only ¼ of a million. But the ordinary expenditure came to £50,259,171 in the regular estimate, or in round numbers 50¼ millions; whereas the actual expenditure came to £51,343,604, or in round numbers 51⅓ millions. Thus the excess of the actual over the regularly estimated expenditure amounted to £1,084,433, or, say, one million. This difference of expenditure of one million arose on several items: the principal of these was the Public Works, the ordinary expenditure on account of which showed an excess of £492,004; of the remainder, £186,346 arose from the Army, and £335,235 in the items of interest, marine, and miscellaneous expenditure. These make up the excess expenditure of one million. Thus, taking the diminution of revenue and the excess of expenditure together, we commenced the current year worse by £1,302,891, or in round numbers with 1⅓ millions less than we expected.

"For the current year it will be in the recollection of the Council that my budget of March last showed an estimated revenue of £49,340,840, or in round numbers 49⅓ millions, and the ordinary expenditure £49,288,190, or close upon the 49⅓ millions. This result shows an equilibrium, or the

small surplus of £52,650. Now this equilibrium, as the Council are so well aware, has become disturbed. There have been several circumstances militating against the estimate, amongst the first of which must be mentioned the item of Bengal opium. The price of Bengal opium, which was taken in the budget at Rs. 1,330 per chest, and was taken in the Revised Estimate at Rs. 1,141, has now fallen to about Rs. 1,100 a chest. Again, the exportation of Malwa opium from Bombay has been less than was expected, and less than it has been in recent years. Thus, although we shall sell 2,000 chests more of Bengal opium than was estimated for in the Financial Statement, still, taking the fall of prices at Calcutta, and the diminished exportation from Bombay, we fear that the opium-revenue will be £500,000, or ½ million, less than was expected. Again, the yield of the Income Tax will be less than what was expected by £220,000, or in round numbers ¼ million. The Customs will be less than the estimate by £408,500, or ½ million. In September last the Government of India had but too good reason to apprehend that there would be a loss in the land-revenue of £183,100. Since then there have been timely and abundant rains; in many parts there is as fair a harvest as ever waved over the plains, and we hope that this loss of land-revenue may yet be averted. However, these various shortcomings of revenue below the estimate make up, with one or two items regarding which I need not trouble the Council, a loss of £1,299,440, or in round numbers 1¼ millions, bringing down the revenue to £48,041,400, or, say, 48 millions.

"On the other hand, while the revenue is thus falling below the anticipation, the estimated charges have arisen from £49,288,190 to £49,768,802, making an excess of £480,612, or nearly ½ million. This ½ million arises mainly under these items—interest payments in India, additional expenditure on Bengal opium, and expenditure in England. Altogether, what with the decrease of revenue and the increase of charge, there is an apparent deficit of £1,727,402, or in round numbers 1¾ millions. Now, as I said before, these figures are taken from the published despatch of 20th September last, which might be considered to be virtually tantamount to what is technically termed a 'Revised Estimate.' Such estimate, according to the established practice, is always prepared within six months after the Budget Estimate. The only difference this year has been in respect of time. It has been in the power of the Government, owing to various improvements in the Account Department, to bring out a tolerably good 'Revised Estimate' at an earlier period this year than heretofore. Since the preparation of this estimate, the period which has elapsed has perhaps made some slight changes; still, on the whole, having gone through all the figures, and having had the advantage of considering

the state of affairs at the two great financial centres, Calcutta and Bombay, I cannot hold out any hope whatever of the result being better. We shall be fortunate if it does not turn out worse. If in one or two respects our prospects have brightened, in one respect they have become darker. That being the case, we have to face the apparent deficit of $1\frac{3}{4}$ millions, and it has to be averted, if possible, by some means.

"Now, how has the Government of India proposed to meet the difficulty? In the first place the Council are aware, from the Resolution and documents under the signature of my Hon'ble friend opposite (Colonel Strachey), that about £792,500, or nearly £800,000, have been cut off from the expenditure on Public Works ordinary. Thus the grant proposed in my budget for Public Works ordinary has been reduced from £5,851,050, or in round numbers $5\frac{3}{4}$ millions, to £5,058,550, or in round numbers 5 millions. Whether or not the whole of that amount will really be saved, is more than perhaps the Government of India can at this moment affirm. I can only rely on the co-operation of our colleague (Colonel Strachey) to ensure that result; if vigour and strictness can secure it, it will be secured no doubt. Then, there have been some reductions suggested or ordered in the Police Department, and in respect of Civil allowances. Though important reductions in some Police appointments may be ultimately practicable, still just consideration must be shown to the officers affected by such changes. Again, the Council are aware that important reductions of Army expenditure have been proposed to Her Majesty's Government: what the result may be we can hardly say; but one thing is financially certain, that these reductions, even if carried out to the fullest extent, can give no saving in *this* current year. Even if some of them were to be carried out instantly, the result would actually be the immediate temporary increase of charge from the grant of gratuities to discharged men and the like.

"So much then for those savings which could be made to any material extent. On the other hand, as regards the enhancement of resources, the Bill for raising salt-duties in the Madras and Bombay Presidencies has been published: it is now to be proceeded with further under the auspices of my Hon'ble friend Mr. John Strachey. The estimated yield of that enhancement during the remaining half of the current year, if calculated strictly, would be £200,000; but there is always a difficulty in calculating the exact yield of a duty enhanced in the middle of a year, and we should hesitate to take that amount as the yield of the proposed enhancement on salt in Madras and Bombay. Perhaps £180,000 or £190,000 is the most that can be reckoned on.

"Thus it will be seen that taking the Public Works reduction and the enhancement of salt-duties together, the total would amount to less than one million, leaving more than £700,000, or ¾ of a million of deficit to be made up.

"Now, how is this to be done? We say that it must be done, partly at least, by enhancing the duties of the Income Tax: therefore it is that we propose to raise the rate from one per cent. to two per cent. for the last six months of the year; or, in other words, doubling it for the latter half of the year. Then, what will be the result? As already seen, the revised estimate of Income Tax for the current year at one per cent. for the whole period amounts to £680,000: supposing that figure were borne out by the actual result—and we adopt it because it is much less than what was expected from the data of former years—the additional yield of the extra one per cent. should be £340,000; but, notwithstanding that so much allowance has been made, I would prefer to take the amount at £300,000; and this added to the million, or less, already shown, would only make up something under £1,300,000. That would still leave more than £400,000 of the deficit to be made up. I need not say that every effort that can be made during the few months that remain to destroy that remaining deficit,—to run it hard, to break its back, so to speak,—will certainly be made; but at this moment it is impossible to give any positive assurance, except that we will press reduction to the utmost limit possible.

"The above comprises the main points of the case which I have to state. I believe the Council will accept the facts as affording a complete justification of the measure which is before us. The details of the measure are to be found in the Bill before the Council, and also in the Statement of Objects and Reasons put forth in September last by my friend Mr. Strachey. I do not know that I need take up the time of the Council further on this point.

"So much then for the Bill now to be introduced and referred to a Select Committee.

"But I hope that the Council will bear with me for a few minutes while I briefly examine the main differences between the budget and the revised estimates. I consider such explanation to be due to the Council when I ask them to vote for a law to impose additional taxation in the middle of the year.

"In the first place it may be observed that for the year 1867-68 we received a revenue of £48,429,644, or, say, in round numbers 48½ millions. For the year 1868-69 we received £49,070,242, or, say, 49 millions. Then I budgeted for a revenue in 1869-70 of £49,340,840, or in round numbers 49⅓ millions. This is only one-third of a million in excess of what we had

actually received in the previous year, and that one-third million arose from additional taxation. So that without additional taxation there was no increase budgeted for. We merely estimated to receive what we had received from the year just expired. Now considering that the normal condition of the revenue of India has been that of increase; that within the last ten years we had increased our revenue by ten millions, it appears to me, on a general retrospect, that 49⅓ millions represented a fairly moderate estimate. If the main items of the budget revenue be compared with those of previous years, it will be found that in no large item did we estimate any particular increase, save in that of Land-revenue, and even there the increase was not considerable. But, then, for Land we followed the estimates framed by the Local Governments, who were necessarily the best judges for that particular branch of revenue. The aggregate of the local estimates for Land came to £20,495,000; the budget was £20,595,500. But the budget included £40,000 for waste lands' receipts, and other items not included in the local estimates. On the whole, then, the local estimates, and the estimate of the Government of India, amounted almost to exactly the same figure.

"With respect to Opium, which, as the Council has seen, comprises one of our principal losses, we expect to get only £7,786,200, or in round numbers 7¾ millions, instead of £8,286,540, or 8¼ millions, which we expected to receive in the current year. Now, in the year just passed, we actually received £8,453,365, or in round numbers 8½ millions. In the year before last we got £8,923,568, or, say, nearly 9 millions. That is to say, the year before last we got 9 millions, last year 8½ millions, and we hoped to get 8¼ millions this year. But we are now to come down to 7¾ millions. Thus, *primâ facie*, the estimate of 8¼ millions was taken low. Of course one reason for our taking the estimate lower than the amount that had actually been obtained in the two previous years was, that we expected less on Bengal opium, owing to the supply having been for some time diminished by the drought in the poppy-growing districts. We also estimated the price per chest, at a rate lower than the rates which had been governing the market for some time past. The price budgeted for was Rs. 1,330 per chest, instead of Rs. 1,380, realized on the average of the year just concluded. Prices had continued high the whole year, sometimes overtopping Rs. 1,400 per chest; they had been particularly high in months immediately preceding the budget. There was indeed a slight fluctuation at the moment of the Financial Statement being made, but even then there was no material reduction whatever. On the contrary there was an indication of even higher prices. For if the price of Bengal opium was to be regulated by the ordinary law of supply and demand in the China market, it would manifestly rise before an expected defi-

cient supply. Such was the opinion even of some well-informed authorities. We doubted, however, whether the price had of late followed the ordinary law. We rather feared that it had assumed a speculative character, and we thought that it would be safer to take, not the high prices ruling during the current year, but the average of three years, which gave a lesser rate. Then, if any accident should happen in the midst of such uncertainties, it could not be laid to want of prudence or caution on the part of the Government of India in estimating the price. But while we providently estimated some fall in the prices, the actual fall has unfortunately been greater than even our anticipation. Of course, with regard to the future in any branch of revenue like this, it must be mainly a matter of opinion. As regards opinion, the Council may remember that, when I brought forward my Financial Statement, there was an eminent member of the mercantile community then sitting with us. I allude to Mr. Bullen; and he, with his knowledge of the subject, expressed in the debate on the budget the following opinion. He said—the Council would find it in the printed records—as follows :—

'He thought it possible that receipts from opium were a little under-estimated, because, although the provision for the year would be small, owing to short yield on account of badness of season, yet it was probable that prices would rise in proportion to reduced quantity, and the result would be that opium would show some increase on the amount estimated.'

"Well, so much for opinion. That opinion has been indeed controverted by the actual result. But in a matter of so much uncertainty as opium, a fall in prices is no matter of surprise, and conveys no imputation on the carefulness or forecast of the Government of India.

"The next item is that of Customs. Now, we took £2,773,500 against the amount of £2,692,755 of the year just over. The figures were almost the same. The Customs-revenue had been for the last three years steadily increasing. The trade statistics, which as the Council know are now prepared in the most elaborate fashion, showed the same result; indeed the increase of our foreign trade is so notorious that I will not dilate on it. In framing the budget we looked to the statement of monthly actual receipts during the current year then drawing to its close, and these monthly statements showed a steady increase up to the very eve of the budget, both over the actuals of the preceding year and over the budget-estimate of that year. The trade statistics, which were then prepared to within three months, gave a similar indication. The trade of last year was so far good, that it rose from 100 millions total value to

106 millions. Therefore, at the time we framed our budget, there was not any single actual fact which would justify us in supposing that there was likely to be any decrease. I speak of the actual facts then known, and of the statements then available. It is true that we did consider that the distress, drought, and famine in Northern India must affect the purchasing power of some classes of our population; but the population affected would consist of the poorer classes, and those were not generally the classes which consumed dutiable articles. However, that was considered, and it was the main reason why we estimated for no material increase in the Customs-revenue, although there had been an increase for the last three years. We were aware, also, of the revision of the tariff valuations; but the probability of such revision affecting the yield of the duties was extremely small. Some well-informed parties considered that this just revision of the tariff would rather lead to an expansion of trade. That point has been very well brought out in the published despatch of the Government of India of the 20th of September. But for the future there was scope for opinion as apart from the facts; and I shall quote the words of our late colleague Mr. Bullen, who, besides being an eminent merchant, was also a member of the Tariff Committee which had just sat, and was therefore peculiarly experienced in respect to the Customs-duties. Referring to the records of the Council, I find that Mr. Bullen said :—

'If they looked to Customs, there also might be some increase by natural growth of trade; but against that must be set that the fixed valuations on which the duties were levied were to be reduced. There could not, therefore, be a great increase in the Customs.'

"Of course, in my humble opinion, that was a just and moderate manner of regarding the prospects of our Customs. It is quite evident that, at that time, so good an authority as Mr. Bullen considered that there would be a natural growth of trade. He further considered that there should not be any great increase in the estimates on account of Customs, and there was no great increase; in fact there was no appreciable increase. Unfortunately, from causes which it is difficult to fully explain at this moment, there has not been the growth of trade to which Mr. Bullen alluded; there has been to some extent a depression. The consequence of that is that we fear that the Customs-revenue will fall during the current year to £2,363,000, being less not only than the amount of the last year, £2,692,755, but also less than the revenue of the year before, £2,578,632. That this decrease in the Revised Estimate framed in September last is but too likely to be justified, I must admit, especially after considering the unfavourable manner in which the trade season has opened in

Calcutta and Bombay in November, which is usually the commencement of the brisk season. So much then for that particular figure. As regards the framing of the Customs-estimate, I do not mean to say that we cannot introduce improvements in that respect. We will again examine the method of estimating in all its details, and whatever can be done from English experience or local knowledge shall be done. But I beg to assure the Council that we have a certain method of framing these estimates. It may not be the best method. I believe it is not quite the best method that may be adopted. At all events it is a method. First of all, the estimate is framed regularly by the Customs Department,—by the Collectors and Commissioners of Customs. In that Department, they possess the most complete information regarding every single item. They know the quantity of goods in bond: they also know, or should know, if they choose to enquire,—and I have no doubt they do enquire,—as to what quantity of goods are expected, or are afloat. They have of course the most complete information of the collections up to the last hour; and with all this knowledge they form their estimate. That estimate is submitted (in Bengal) to the Board of Revenue. The Board will possess almost as much information as the Customs Department itself, and they again go over the whole estimate, checking off article by article, item by item. Those estimates are submitted to the Local Government, which also possesses general information, and then the estimate comes up to the Government of India in the Financial Department, where it is further checked by the statements of actual collections of the last one or two months subsequent to the preparation of the figures by the Customs Department.

"The next item I shall refer to is that of the Income Tax. As the Council know, I estimated that it should yield £900,000: the revised estimate now shows that it may hardly yield more than £680,000. How was that £900,000 arrived at? It was arrived at in this way. First, the estimated yield of the late Certificate Tax under all the schedules to the Certificate Act was taken. It was considered that on trades and professions the late Certificate Tax was virtually a one per cent. Income Tax. To that we added the probable amount of a similar duty on lands and houses. We assumed very little for the duty on the public securities, because, as the Council know, the Act avowedly made incomplete provision in that respect. Then we took into consideration all the figures and statistics of the Income Tax some years ago brought in by my predecessor, Mr. Wilson. The mass of tabulated, classified statistics of the old Income Tax that have been prepared at various times, and the subsequent Licence Tax, is really very considerable. Now these data were carefully compared with the calculation of my budget; but it will be immediately apparent

that the precise figures of the old Income Tax cannot be taken as the basis strictly of a new calculation. For, in the first place, the figures were ten years old; in the second place, the value of land and houses had risen greatly within the last decade of years; in the third place, there was a new procedure whereby all lands, except those permanently settled, were to be valued in a manner that will treble the assessment as compared with that which would have been made under the old tax: so that we were bound to make a considerable enhancement in the new estimate over the figures under the old tax. But in the new estimate we maintained much the same proportion between the amount from trades and professions, and the amount from lands and houses, as that which had existed in the old tax; or if the proportion was not quite the same, still there was such a resemblance as sufficed for purposes of an estimate. I may add that this estimate was framed three times over, or even more. There was one calculation in 1867, another in 1868, another in 1869. I do not know whether I need say anything further to justify the estimate, inasmuch as it relates to a nex tax, for the yield of which we have not yet even one year's actual data.

"So much then for the three main items in which the Revised Estimate shows a falling off from my budget. On the other hand, I hope the Council will not understand that any desponding view is taken as to the principal branches of revenue raised in the interior of India. I do not in the least wish to imply that there is any falling off in them. Even in the Revised Estimate, the revenues from Land, Forests, Salt, Excise and Stamps stand as high as, or higher than, ever.

"Before quitting this part of the subject, I must observe that the miscellaneous revenue is taken as high in my budget as in the two previous years, and, except in one or two particulars, that portion of the budget-estimate appears to be borne out. But I must remark that this is not a very safe or satisfactory item, and in future budgets we must estimate it more moderately, for although we have of late been receiving these large amounts, yet this heading includes most of those items which are popularly called 'wind-falls,' upon which we ought not permanently to calculate.

"I must still trespass on the patience of the Council in order to notice a few items on the expenditure side, in which discrepancies have arisen in the Revised Estimate as compared with the budget. The first item is that of interest. The Revised Estimate shows an excess charge of £103,238; and this excess arises on two points, namely, the unclaimed dividends, and the interest arising on the new loan contracted this year for Public Works Extraordinary. It

was the practice in estimating the interest-charges to allow for a certain average amount of dividends remaining unclaimed by parties entitled to claim them. It was not very trustworthy; but still, on an average, a certain number of persons in the year did leave their dividends unclaimed, and in this manner the estimate was framed. Last year it so happened that the dividends were almost all claimed, and the consequence was that there arose a discrepancy regarding that particular item. That being the case, we have considered it better not to assume that dividends would remain unclaimed, and therefore it has been decided not to allow for them. On this score some £30,000 must be added to the estimate. The rest of the £100,000 relates to interest on the new loan for Public Works Extraordinary. The Council will ask—Why was the interest on this loan not provided for? The reason was this. When the budget was framed, we believed that the amount in question would be raised in England: we did not venture to hope at that time that the Secretary of State would sanction any portion of it being raised in India. If raised in England, we thought that the money not being required till the commencement of the working season—November of this year—would not be raised till within the latter half of the year. In this case, the payment of interest on the loan would not fall within this current financial year, and therefore no provision was made; that was the particular reason which was yielded to at the time. Looking back now, I admit that we should have considered that perhaps the Secretary of State might authorize the loan being raised in India; or might raise it in England before the latter half of the year. But there was no oversight and no actual error in this matter. After the budget statement had been delivered, the loan arrangements became modified. To our satisfaction, the Secretary of State authorized our raising the money in India. Then we decided to bring the loan out immediately; but the amounts were to be received at the Treasury in instalments, so as to save interest. Afterwards, to accommodate the subscribers, we allowed them to pay in at once all the amounts of the accepted tenders. These circumstances, not exactly known at the time of the budget, have caused the interest-charge to rise higher than was anticipated.

"The next item is £69,700, which represents interest we shall have to pay to the Presidency Banks on overdrawn accounts. As the Council know, we considered at the time that the over-drawing of our accounts with the Presidency Banks arose from advances we had to make for the Abyssinian Expedition. In that case we expected to recover the interest from Her Majesty's Government, so that the charge would not appear in the corrected accounts of the year. But when we came to submit our claims, we found the

data became extremely complicated: we had to make further references; there arose delay in bringing the point fully out. In the meantime the items must appear in the accounts of the year: had the circumstances happened as we expected, they would not have appeared.

"The next item of difference was £81,900 under the head of refunds and drawbacks; that is to say, on re-examining the average of several years we now expect to have to refund £81,000 more than was estimated. How was that original estimate made? It was made on a detailed calculation, province for province, of every amount of drawback and refund expected to be made by each Local Government. Thus the amount contained in the budget was the total of the amounts estimated by the several Local Governments. But this was exclusive of refunds of Income Tax. When the budget was framed, we intended that £900,000 for Income Tax should include the refunds in that branch. It has since been decided that refunds of Income Tax should appear on the expenditure side of the budget, in the same manner as refunds of other revenues, and this has slightly swollen the amount of the estimate. In this point again there was no oversight.

"The next item is £120,000 additional expenditure on opium. This represents an extra payment on an increased number of chests to be brought to sale by reason of the larger quantity of opium produced last year; in other words, the effects of drought on the opium crop turned out not to be so great as was feared. When more opium is brought in, increased payments have to be made. This is a fortunate circumstance, because this extra charge on the expenditure side merely represents a more than proportional increase of income on the Revenue side.

"The next item is that of £30,330 on account of the Straits Settlement. There was an outstanding account with this Settlement, which was once under our Government, but is so no longer; and this item will fall to be paid during the current year. Unfortunately it was overlooked; and I must admit that this particular item does represent an error, though not a serious one, as it was just the sort of item that might possibly escape attention.

"There is an excess charge of £76,500 in the Political Department, representing the additional allowance payable this year to the Amír Sher 'Ali of Cabul. This was not overlooked by the Comptroller General, who obtained the information from the proper quarter; but he accidentally omitted to insert the amount in the estimate. This must of course be admitted to be an error.

"The last item of difference is that of £115,452 in the expenditure in England, which does not require notice here.

"So much for the discrepancies between the budget and the revised estimate now before the Council. But, further, in the regular estimate there are four items on which I desire to offer explanation to the Council; that is, the regular estimate of last year. These points are the salt-supply of Bengal, the land-revenue of the North-West Provinces, the Malwa opium, the Public Works expenditure.

"As regards the salt-supply, it was stated in that estimate in last spring and repeated recently, that when the budget of 1868-69 was prepared, as the Council knows, under the auspices of my predecessor, the fact of the supplies of salt in the Bengal stores being exhausted, or nearly exhausted, was overlooked. Well, since my attention has been drawn to the expression, I find that the fact was not exactly overlooked in that sense by my predecessor. The fact was not really material to the estimate formed in that budget, because, as the Council know, the supply of salt to Bengal arises, not so much from local manufacture, but chiefly from importation from England; if there happened to be a large quantity of local salt, then possibly the amount of foreign salt imported and dutiable would be less; if the local supplies were nearly exhausted, the consumption of foreign salt would be greater. At all events, between the two, the people will obtain the requisite supply. Certainly the year's supply would not be materially affected by the amount stored locally. Therefore, whatever difference there is between that budget-estimate and the actual facts, the cause must be sought elsewhere than in the supplies in the local stores.

"The next item is the land-revenue in the North-Western Provinces. For these provinces the budget-estimate framed by my predecessor showed £4,200,000. The local authorities, sending up their revised estimates at the very height and crisis of the drought and distress, brought it down to £4,000,000 or £200,000 below the budget. When, a month or more afterwards, these local estimates came to be finally revised in the Financial Department, rain had fallen abundantly, raising the hopes of agriculturists, and public confidence generally, and we calculated that the loss would not occur to the full extent originally anticipated by the local authorities. They themselves fully admitted the great improvement in the general prospects of those provinces; therefore, instead of £200,000 decrease, we took £100,000, reducing the figure in the regular estimate to only £4,100,000. Afterwards it turned out

that the visitation of drought or famine had been somewhat greater than was anticipated, and the actual outturn has proved to be only £3,997,000.

"The next item is that of Malwa opium. It fell off in the actuals by £400,000 below the regular estimate. This difference arose in the following manner. The regular estimate showed 225 lákhs, or 2¼ millions. This was borne out by the actuals of the current year and of the year previous. It was accepted by the local Accountant General presumably in communication with the Local Government. It was true that the Commissioner of Customs had taken as the regular estimate 213 lákhs, or something less than what we proposed in the regular estimate. Now, as already stated, the regular estimate of 225 lákhs was taken in reference to the actuals of that year, that is, with eight months' actuals. Those eight months yielded 125 lákhs, leaving about 100 lakhs, or one million, to be made up in the last four months, that is to say, about 25 lákhs per mensem. That was perhaps a sanguine estimate, still it was nothing extraordinary. These were the four best months of the year, and for many years, instances can be found of similar amounts coming in during this brisk period. So far then the regular estimate, based on the actuals of preceding years, and the eight months' actuals of the then current year, was not at all extraordinary or extravagant. Afterwards the fact turned out that, of the remaining four months of the year, two resulted badly, and one only was really prosperous. And it was possible to correct the regular estimate by later information relating to the ninth or even the tenth month. But the regular estimate being professedly based on eight months' actuals, it was not in this case corrected. The adherence to rule may so far be justified, though the result was unfortunate.

"Still the case does illustrate a defect of system as regards the framing of the regular estimate. Strictly according to rule and the routine sanctioned by the Secretary of State, the regular estimate does not represent more than eight months' actuals and four months' estimate. Accordingly, the estimate should be submitted shortly after the expiry of the eight months; but in practice it is often kept back for a while; and being naturally anxious to put forward as correct an estimate as possible, we sometimes so far take liberty as to correct it for a month or two later. But the practice has been uncertain in this respect. On some items correction has been supplied by our officers going beyond the understood rule, especially in those cases where local information is immediately available, such as Bengal opium. In other items our officers do not apply correction, but leave the regular estimate as what it professes to be according to rule. I admit that

this shows that the rule and practice of framing the regular estimate must be immediately reconsidered. The uncertainty in the above respect is apt at any moment to place the Financial Department in a false position. Had our officers understood that by rule every item must be corrected by latest information up to date, this particular discrepancy would certainly have been much reduced, though it might not have been altogether avoided.

"There remains now only the large item of £492,000 excess expenditure in the Public Works Department. As we fortunately have the presence in Council of the Secretary to Government in that Department, he will, I trust, give such information as his Department desires to offer. It undoubtedly does show some defect in the system of that Department, though I beg to say that the blame will not rest solely with the Public Works Department, for there must be some defect in the control of the Financial Department over Public Works finances which allowed this discrepancy to occur. I can only say that, with my Hon'ble friend's co-operation, we shall in future adopt such stringent measures that a recurrence of such a discrepancy will be impossible. I do not say that it arose from actual error on the part of the Public Works authorities, but from a particular defect of system which they share with the Financial Department itself.

"Lastly, I would point out, as regards discrepancies between actuals and estimates, that inasmuch as the estimates relate to the future, which cannot properly be foreseen, there must needs be such discrepancies; but they may arise either from misfortune, which we can hardly control or foresee, or from defects of system, or from actual errors. The Council will immediately see the distinction between these three causes. It does not follow that every discrepancy arises from error or even from defect of system. From the brief analysis I have given of all the discrepancies which have become apparent, and in regard to which I have extenuated nothing, the Council will be able to form their own conclusions as to which discrepancies arose from misfortune, which from defects of system, and which from error. Two errors must undoubtedly be admitted, consisting of the item on account of the Straits Settlement and that on account of the Cabul allowance. They amount together to about £100,000. The relative proportion of these two errors can only be understood by comparing the amount and size of the aggregate estimate. Now, if we consider that the estimate on both sides together amounts to one hundred millions (an estimate drawn from an extraordinary number and variety of sources), there is an error of £100,000 out of 100 millions, or just a fractional error of one-thousandth part. That is as small

a proportion as possibly can be, unless it is said that there should be no error at all. Then there are discrepancies from defects of system, such as that of the Public Works excess expenditure and that of the Malwa opium; also in one or two points in the expenditure of the current year, for instance, that about the unclaimed dividends. But the two main discrepancies in the current year which have, more than anything else, caused the present difficulty, namely, those in Opium and Customs, do really arise from fiscal misfortune, not to be controlled, and hardly to be foreseen. I have now laid the facts before the Council, and the Council can judge for themselves.

"But, saying this much, do I mean to infer that no improvement is possible? By no means. I admit that there are defects in system, which, though not unknown before, have been brought home to us more strongly than ever by existing difficulties. For instance, we must examine more thoroughly than heretofore the monthly statements of actual receipts either from the manuscript returns received, or the telegraphic despatches (for it must be remembered that we have often to get our actuals from distances of hundreds and thousands of miles away). We have such examination now to a great extent, but we must have it more strictly in future: we must check our financial conclusions more immediately by actuals up to the latest day. We must also base our estimates more strictly on the actual results up to date, and less on general conclusions. Then perhaps we must obviate the tendency that exists of taking a somewhat too sanguine view of our estimates, both in respect to expenditure and revenue. There is so much buoyancy and elasticity, and the spirits of everybody run so high, that there may be a tendency to form too favourable expectations of our undoubtedly great resources: and this must be obviated. Then, in particular, there are many cases of discrepancy arising from adjustments: these adjustments and inter-adjustments between province and province, or presidency and presidency, are very great; and that being so, there is a tendency in the local authorities to let these adjustments stand over till the end of the year. The consequence is, that we never are quite certain up to the last moment as to how we stand. The actuals seldom show the full amount of expenditure, because so much remains to be adjusted. This throws an excessive burden on the last two months, and tends to falsify the conclusions drawn for the ten months. We must endeavour to ensure greater current regularity in this respect. Then we must revise the rules for the preparation of our regular estimate. The false positions into which we occasionally drift by the present rule of framing the estimate are but too well illustrated by the case of Malwa opium which I have explained to-day. Further,

as is well known, it is on this regular estimate that our cash-account and our published estimate of cash-balances have to be based. As explained in my Financial Statement of March last, this great account comprises an aggregate of 80 millions on each side. The sum of cash-balances represents the balancing item at the very end of the account. If, therefore, there be any discrepancy in any part of this immense account, the cumulative effect will fall upon the balancing entry at the end, namely, that of the cash-balances. Now, considering that we have to put forth the entry of estimated cash-balances before the commercial world, I think we should improve it by taking the facts available to us from the cash-assets in our treasuries up to latest dates. On the last occasion, I presented the cash-balance estimates framed according to the rules then in force. I shall follow an improved method on the next occasion.

"Above all, we must adhere more strictly than ever to the budget-allotments for expenditure. The Council know that there has always been a tendency to exceed these allotments. The local authorities naturally look primarily to efficiency. Everybody is animated by a sincere desire to improve the country, and all this conduces to a disposition to disturb the budget. If this cannot be stopped, there will be a repetition of the deficit that now exists, and we shall be constantly obliged to have recourse to special legislation for fresh taxation.

"But as the best guarantee that all requisite improvements will be gradually effected, I need only point to the reforms made in the last few years. Within that period the budget-system has been introduced under great difficulties. The whole system of accounts has been revolutionized, and there has been obtained a degree of punctuality never heard of before in India; and among the first-fruits of this punctuality is the early date of the Revised Estimate this year, which has enabled us to present facts for additional legislation to avert the threatened deficit.

"I do not know that there is any further point to which I should advert. This is only an *ad interim* statement; and if there are other points which require explanation they shall be explained when I bring on the budget in March next. In the meantime I appeal to the candour of this Council to consider whether the existing difficulty does not mainly arise from fiscal misfortunes hardly to have been anticipated, from fluctuations in trade generally, and in the China market particularly. How could we, a year ago, have found justification for imposing on the country those sacrifices which we are now compelled to propose? If we had then come forward and said that there were such anticipations about the future that we must double the Income Tax and

arrest public improvement by cutting off three-quarters of a million—I ask whether such a conclusion would have found acceptance, or whether such proposals could possibly have been carried? Yet that is exactly what has been rendered necessary by subsequent events. The Government of India should be judged not by the extent of fiscal misfortunes which cannot be prevented nor reasonably be foreseen, but rather by the degree of energy, efficiency, and resolution with which a deficit is met, as soon as it is proved to be approaching."

Colonel the Hon'ble R. STRACHEY:—"My Lord, as so large a proportion of the unforeseen expenditure of the past financial year is due to the Public Works Department, it will, no doubt, be satisfactory to the Council, as my Hon'ble friend Sir R. Temple has suggested, to receive an explanation somewhat more in detail than has been given in the papers that have been published by the Government, of the nature and causes of the excess outlay. This, starting from the budget-estimate of the year, which gives the proper standard of comparison, reaches the very large amount of £841,435 on the ordinary Public Works outlay,—which, excluding railway charges, amounts to £6,122,005,—and of £444,160 on the Railway outlay,—amounting to £1,991,150,—including guaranteed interest, or in all £1,285,595. These figures, it will be understood, refer only to charges against the Revenues, and do not include the results of the expenditure classed as Extraordinary, which falls on funds provided by loan, and with which we need not, on this occasion, concern ourselves.

"Referring first to the ordinary Public Works outlay, excluding Railways, it may be stated that the excess over the original budget-grant of the year is covered to the extent of £510,130 by additional grants made by the Financial Department in the course of the year, so that the excess which the Public Works Department has to account for is thus reduced to £331,305. The additional grants were given for the following objects:—

1.—To make good an arbitrary reduction of the same amount made by the Financial Department in the original estimate for Military Works, on the presumption that the money would not be spent ...		£250,000
2.—For Famine Relief Works		£100,000
3.—For Civil Buildings—Madras Jails ...	£50,000	£95,000
Bengal Currency Office	£45,000	

4.—For Calcutta Port Works. This is likely to be repaid hereafter from the Port Trust Funds £30,000

5.—To cover an erroneous deduction made from the Public Works Estimate by the Financial Department on account of stores £40,000

"The difference between the above and the sum before named is made up by some other small items and reductions.

"The excess outlay, amounting to £331,305, results from an excess in seven Provinces, diminished by a saving in five Provinces. The gross excess was £374,031, and the gross saving £42,726. The savings were as follows:—

	£
Panjáb	17,657
Oudh	5,868
Hyderabad	1,962
Rájputána	12,880
Coorg	4,358

"The net excess, setting-off the savings, was thus distributed—

	£
Madras	39,126
Bombay	57,267
Bengal	13,261
North-Western Provinces	90,730
Central Provinces	100,858
Burma	16,675
Central India	56,114

"The works on which the outlay was incurred may thus be classed—

1.—Famine Relief Works under authority more or less complete, chiefly in the Central Provinces, Madras, and Central India £130,615

2.—Charges for the preparation of materials for Extraordinary Irrigation Works debited against Revenue, which would properly have been chargeable to loan, chiefly in Bengal and North-Western Provinces ... £51,420

"Irrigation Works entered in the Budget as extraordinary, but eventually excluded by the Government of India, and made chargeable to the ordinary grant as not complying with the conditions under which alone money is permitted to be given from the Loan Funds. The ordinary grant was unable to cover these to the extent of £10,681

Expenditure not authorized, less savings £138,588

"It thus appears that about £230,000 of the whole excess above the Budget Estimate is due to Famine Relief Works; £300,000 to restoring sums erroneously struck out of the Estimate in the Financial Department; £125,000 to grants for new objects; £60,000 for Irrigation Works which were wrongly charged to Revenue instead of to the Loan Funds, or for works undertaken in expectation of their being charged to the Loan Funds; and £140,000 to unauthorized outlay.

"The irregularity of the Public Works Department is, however, strictly speaking, larger than is indicated by the above sum, because, under the rules of the Department, savings under certain heads are not properly applicable to excesses under others. Taking this into consideration, the sum that has been spent without proper budget-sanction is about £250,000, which is about four per cent. on the whole of the expenditure for the year. When it is remembered among how many different provinces this outlay is divided, and, further among how many disbursing officers, and on how many separate works, the sum has to be distributed, the amount of individual irregularity is much less than might at first sight be supposed.

"Moreover, it is proper to notice that this is the first occasion on which the Public Works Department has fully spent the grant made to it. The Government of India has till now for some years past been steadily pressing the Local Governments to utilize fully the whole of their grants, and on one occasion it even went so far as to say that it would be better to incur a small excess than not to apply the whole sum made available. In truth, the necessity for keeping the expenditure within the grants has not hitherto been seriously felt by the Government itself, nor properly impressed on the officers of the Department. The results of the past year have led to the adoption of other, and assuredly more correct, views, and we may be confident that henceforth additional attention will be given to the more exact management of the disbursements, so as to prevent any excess outlay in the future.

"To some extent the action of the Government of India in the Home, Financial and Public Works Departments may be held to have added to the

apparent irregular expenditure. Promises of grants for relief-works were made, which promises were acted on before formal statements had been received of the precise sums that would be needed, and thus, in more than one case, the financial year closed before the promised grant was really made, and outlay became irregular which otherwise would have been covered by authority.

"Although I have spoken of the excess expenditure of the past year as debitable to certain heads of charge, among which famine-relief operations figure for £130,000 and more, it will be misleading the Council if I do not add that this statement of the heads to which the excess is properly debitable in an Account point of view, is hardly to be regarded as affording a true indication of the efficient *causes* of the excess—in the sense, that is, of causes which necessarily and unavoidably led to the results in question. The technical excess is the sum by which the actual outlay exceeds the authorized outlay at the end of the year when the accounts are closed, and technically the excess is distributed as I have already explained. But a closer examination of the facts shews that it is not in reality from any temporary pressure caused by famine or otherwise that the excess arose. It was, I may say, entirely the result of what must be called defective departmental management. At the end of the eleventh month of the year there was no prospect of an excess, and if the expenditure in March had not been increased in an extraodinary manner, the year would have closed without any excess whatever. The expenditure in March last under the heads now under consideration was, for all India, £1,147,000, while in no other month had it come up to £640,000. In April it again fell to £475,600. Throughout the year, excepting March, it had ranged at about £500,000 to £600,000 monthly.

"In short, if the usual rate of expenditure had been continued in March, the operations of the Department would have closed with a fair saving, and it is beyond dispute that the excess must be attributed to a failure on the part of the controlling officers of the Department, in the important duty of limiting the supply of funds to the disbursing officers, within the limits assigned by the grants regularly made by the Financial Department for the several heads of service under which the Public Works expenditure is divided. I have already stated that the lax manner in which additional grants had been made and promised naturally, and even necessarily, led the controlling officers to corresponding laxity in the issue of funds, and to this extent the Government of India and its officers must share the responsibility of the final results. The disbursing officers themselves are probably in no way responsible for the excess, because they look to the Controllers of Accounts to indicate what

sums may be spent, and there is nothing to suggest unauthorized action on their part.

"There is reason to believe that one important disturbing cause in the financial regulation of the operations of the Department has been the introduction of the distinction between the Ordinary and Extraordinary expenditure, which last has during the past year for the first time become an important item, and of the rules under which some of the grants—as those for Military works and Irrigation works—are not available for transfer for other services. The funds to meet the expenditure are necessarily drawn from the Civil treasuries without reference to the exact objects on which they are to be spent, and the necessary attention has not been given to guard against the unauthorized expenditure of the grant under one head, on works falling under another head; so that, although the aggregate grant for all purposes has not been exceeded, excess has been permitted under some of the heads of service. To secure proper simplicity in the accounts, a single cash-account is necessary; and what is wanted is a machinery to admit of the aggregate amount of all the Public Works grants being drawn, when required, as though it belonged to one fund, but to secure expenditure under each separate head of service not being permitted to go beyond the separate sum allotted to it.

"Attention having been drawn to this point, all that was requisite was readily done to secure the object in view, and it is believed that no error will again arise from this cause. The necessity for strictly limiting the issue of funds to the disbursing officers within the grants regularly made, is so obvious a duty, that a very moderate degree of vigilance will give complete security against the recurrence of any failure in respect to it.

"It may, perhaps, be useful if I remind the Council that the outlay of the Public Works Department differs greatly in its character from that of most other departments of the administration. In the Civil Departments the outlay is almost entirely for salaries or allowances, which do not vary greatly from month to month, and the expenditure of a series of months commonly gives a good test of the outlay likely to be incurred in the following months. In the Public Works Department this is far from being the case, the disbursements being in a very great degree optional and arbitrary. An estimate of the future outlay cannot be at all safely based on the outlay of the past, and the only safe guide for anticipations is the sum allowed to be spent. The experience of the past year shows this in a striking manner, the outlay in the last month of the year having been (as I have already noticed) nearly double that of any previous month. This sudden jump in the expenditure is so remarkable

a feature of last year's operations, that I have been induced to enquire into its precise causes. To some extent, but not to an important one, it is due to transfer-charges brought forward in the last month of the year, but it is mainly caused by actual and legitimate increased outlay for various purposes, incurred generally in consequence of the efforts of the departmental officers to spend the whole of their available grants within the year, at the end of which the unspent balance would lapse. Payments of various sorts have thus been made to which, so far as my information goes, no reasonable objection con be taken on the score of their character or objects, but only because they involved an excess over the Budget-grants.

"Such a result, showing to what an extent the expenditure can be suddenly expanded at the very end of the year, gives additional proof of the necessity for requiring that the expenditure shall be strictly limited within the actual grants, and making the controlling Financial Officers of the Department rigorously responsible for preventing any excess. Under a proper system efficiently administered, the outlay of this Department can be completely kept under control by suitable expansion or contraction of the funds issued to the disbursing officers, and any unusual or sudden increase of expenditure, likely to lead to financial inconvenience, can quite easily be prevented. I have no reason whatever to suppose that the existing system of the Public Works Department fails in any respect of what is thus required of it, and I can confidently look forward to the future satisfactory administration of the financial branch of this Department, under its present accomplished and vigorous head, Colonel Chesney, now that the Government of India itself thoroughly accepts the policy of complete financial regularity.

"On the whole, as to this part of the outlay, the essential points brought out by the results of the past year's operations are, that additional strictness must be introduced into the system of making grants of money for Public Works after the commencement of the year; that complete conformity should be required to the rule that forbids expenditure on any object until a specific appropriation of funds has been made of the needful amount from a regularly authorized grant; that no disbursing officer should be permitted to spend money in excess of the amount appropriated for his use for each particular work or purpose. Until the practice of the Public Works Department is brought into substantial conformity with these principles—and I must say that a great deal still remains to accomplish such a result—the time will not have arrived for any relaxation of the close scrutiny into the operations of the Department which the Government of India considers to be its duty to maintain as the

responsible head of the finances of the country. The results of a want of due caution in dealing with the vastly multiplied transactions of a great disbursing agency like that of the Public Works Department are, I should conceive, sufficiently indicated, by what has happened last year, to satisfy every one that, whatever be the defects of the present system of control, they do not lie on the side of excessive stringency or repression.

"I have, perhaps, dwelt rather more on these topics than their intrinsic importance deserves, and I may seem to have spoken of the defects of practice to which I have referred as being more grave than they really have been. But I have purposely said everything that had to be said on the matter, because the administration of the Public Works Department is so commonly ill-thought of, and because I myself think well of it, and believe that it will bear the most complete scrutiny into its system, and may challenge a comparison with any similar organization in India or elsewhere. It is, indeed, to the severity of our principles of account, and not to their laxity, that such defects as I have had to speak of to-day are looked upon as defects calling for serious attention, and I firmly believe that in no other branch of the public expenditure will a smaller proportion of irregular outlay be found to occur.

"I now pass to the Railway expenditure. For the control of this, the Public Works Department has hitherto been but partly responsible, and it will only be from the beginning of the next financial year that the entire charge will be transferred from the Financial Department, in which a great portion of the business was carried on, to the Public Works Department.

"The excess outlay under the head of Railway is almost entirely due to the falling off in the Railway traffic, and the consequent increase of the net charge for guaranteed interest, which, against an estimate of £1,202,900, actually amounted to £1,700,370, giving an excess of £497,470. I will not detain the Council with any detailed comments on this part of the expenditure, but I would point out that the charge for guaranteed interest is the balance of a somewhat complicated series of accounts, none of which are satisfactorily within the control of the Government of India, and in respect to which the power of the Government to obtain satisfactory estimates is very incomplete. The principle of showing all transactions in the public accounts as they occur, without set-off, has been departed from in the case of the guaranteed Railway interest, and I think with decidedly bad results. The Government of India has the question of how to deal with the whole of the Railway accounts now under consideration, and it is probable that some serious changes will be made, among which may be expected the exhibition of the gross

Railway interest as a charge, the net receipts being shown as income, and the adoption, for the Railway accounts, of a system having the general characteristics of the Budget-system of the Public Accounts. The important bearing of the transactions of the Guaranteed Railway Companies on the finances of India is sufficiently indicated by the circumstance that, in the past year, a charge of almost half a million, for which provision was not made in the estimate, had to be provided for, and that such charges are to a very great extent beyond the control of the Government, extremely difficult to estimate with accuracy, and at any time liable to recur almost without warning.

"It manifestly becomes the duty of the Government to do everything in its power to bring within due financial control charges on the Revenues such as these, and it is not less obvious that it is only by careful attention to the Railway income and expenditure, and to the accounts which exhibit the results of the working of the Railways, that such a control can be established and maintained. I have no difficulty in saying that till now the Railway accounts have not been so dealt with as to admit of the exercise of a satisfactory financial control of the operations of the Companies, and that there are few things which have a more important bearing on the satisfactory management of the general finances of the country than the early establishing of an efficient system of Railway account and financial control. The object of the Government in its dealings with the Railway Companies in these respects can only be to secure an exact and prompt knowledge of their transactions, and to prevent wasteful expenditure, which objects are no less important to the shareholders of the Companies than to the Government. There is no possible conflict of interests, and it is a plain paramount duty of the Government of India to the tax-payers of the country to exercise, within the limits of the authority secured under the contracts, a control as real and efficient over these transactions, which involve payments of public money on a very large scale, as over any other branch of the public expenditure.

"During the past year the other elements of Railway charge debitable to the revenues have not been very important. There has been an excess outlay under the heads of Controling Establishments, and Land for the guaranteed lines, of £39,433, and of £29,957 for charges on account of the Calcutta and South-Eastern Railway, which were brought to notice after the Budget-grants were fixed. Against this has to be set-off a saving of £122,700 for loss by exchange, the net result of the operations of the year having terminated with a gain under this head which is shown as a receipt amounting to £15,435. In all, these items

show a net saving of £53,310. These amounts differ somewhat from those shown in the Civil accounts; but the difference is not important, and it will be adjusted on the transfer of the Railway accounts to the Public Works Department next year.

"The income of the Public Works Department for the year was £529,049, having been better than the Budget Estimate by £133,049. The details of the income call for no special comment.

"My Lord, I will only add a few words more. The Public Works Department is very commonly regarded as the great enemy of public economy, and the first cause of financial disorder. We are told of the tyranny of the Public Works Department from which no Government can escape. But in fact, what is this Department? It is the Agency, and nothing more than the Agency through which the Government, in all its various Departments, supplies itself with extravagancies. The Public Works Department does not desire to build palatial barracks, nor splendid hospitals, nor vast court-houses. It has no wish to stud the country with police offices and stations. All these works are undertaken to satisfy the various Civil Departments of the Administration, and the difficulty of the Public Works Department is to bring their demands within reasonable and practicable limits. So it is in truth with all other works. The Public Works Department receives from the Government that sum which the Government thinks fit to spend from year to year on this class of objects, and does its best to apply the money suitably. And the remedy against any fiscal inconvenience that can arise from the operations of this Department is in the most complete manner in the hands of the Government; indeed, in a far more complete manner than in any other branch of the Administration. How true this is is shown by the occurrences of the last few months. The Government having become really alive to the necessity for economy, at once reduced the Public Works expenditure by £800,000, and next year will reduce it by a million and a quarter. To speak of a mere disbursing agency as in any sense responsible for the extent of the outlay it manages is a complete misuse of terms, and in future I hope that, when it is thought proper to find fault with any excessive expenditure on Public Works, the responsibility will be attributed, where it is due, to the Administrative Departments, and to the Executive Government."

The Hon'ble MR. COWIE said that, while he very deeply deplored the necessity for this enhanced taxation, he was the very last person who could object to it; for, in the month of February last, he took the liberty of writing to Sir Richard Temple to suggest that, if an income tax were to be imposed at all, it should not be less than two per cent. He had two reasons for this

step; first, a belief that, if the machinery of the income tax were to be revived, it was not worth while to put it in motion for so small a result as one per cent., and, secondly, that, if the larger tax were imposed, the hands of Government would be so strengthened, financially, that they would be enabled to reduce at least some of the export-duties which pressed heavily on commerce.

The budget was produced, the income tax was fixed at one per cent., and the export-duties, including that most objectionable one on rice, remained as they were.

In giving his concurrence to the present Bill, he would take the opportunity of mentioning another tax which he should prefer to have seen introduced.

In this Council Chamber he had more than once heard the argument used that, where the united wisdom of the Lords and Commons had passed certain laws, we, in India, could not go very far wrong in following the precedent. Now, His Excellency was well aware how large a sum was contributed to the revenue of the United Kingdom by the probate and legacy duties, and His Excellency was equally aware that here we had nothing at all analogous to them.

He was not competent to say what would be the result of such taxation throughout the length and breadth of the land; but, looking at the Presidency towns and their long lists of probates and administrations, it was clear that a very large amount of property, real and personal, passed annually to relatives, friends and creditors, on which the Government imposed no tax whatever. The idea of a succession-duty was no novelty; and he claimed no credit for now naming it. Possibly, it might already have received the careful consideration of the Executive Government; but, in entire ignorance of whether this was the case or not, he thought he was justified in recording his humble opinion that such a tax would be a safe, expedient and profitable mode of adding to the revenue of the country.

The Hon'ble MR. STRACHEY :—" Having, my Lord, held charge of the Financial Department of the Government of India for the last six months, during the absence of Sir Richard Temple, I must necessarily bear a larger share of the responsibility than that which falls upon my Hon'ble friend, for the measures of increased taxation and retrenchment which the Government has thought it right to introduce. Nevertheless, I see no necessity for taking up the time of the Council with any detailed explanation or justification of the course adopted by Your Excellency's Government while I was connected with the Financial Department.

Not only has my Hon'ble friend, Sir Richard Temple, just explained fully and clearly the main facts which have occurred, but we have had the great satisfaction of learning—although I never doubted that it would be so—that the measures taken during his absence have met with his approval. And I must, before saying anything more, thank my Hon'ble friend for the too flattering terms in which he has spoken of my own share in what has been done during the last six months.

"When, my Lord, the Government became aware that our financial position was less favourable than it had been supposed to be, and was satisfied that measures of stringent economy and of fresh taxation were unavoidable, it immediately, as the Council well known, laid before the public an unreserved statement of the conclusions at which it had arrived, and of the data on which those conclusions were based. Nothing was kept back. There is nothing which I could now say regarding the present condition of the finances which the public does not know already, or which it will not learn from the statement which my Hon'ble friend has just made to the Council. And if no further explanation of the views of the Government be necessary, I think that I may also say that no justification is necessary of the course which has been adopted. Although the measures that have been taken have been of an unusual, and, as all such measures must be, of a very unwelcome character, involving, I fear, much hardship to individuals, and the imposition of fresh burdens on many who can ill afford to bear them, those measures have been (I think I may fairly say) accepted with a rare unanimity of approval by all classes of the public. The event has proved the wisdom of Your Excellency's determination to let in the light of day upon the views and proceedings of the Government, and to obtain that invaluable support which even an Indian Government derives from the free and intelligent expression of the public opinion of our countrymen.

"I will not, my Lord, pretend that the experience of the last six months has increased my admiration for the system on which the Financial Department of this Government is organized; nor will I disguise my belief that my Hon'ble friend, Sir Richard Temple, will find in the Financial Department ample scope for the exercise of that energy and ability which has left its mark on more than one Indian Province, and the application of which to our finances was unfortunately interrupted by the causes which compelled him to be absent from India at a somewhat critical time. But the experience of the last six months has given me a stronger conviction than I ever had before of the thorough solidity and safety of our

real financial position. Although there are present difficulties to overcome, I think that, in regard to the future, everything is encouraging.

"Much has been said, for several years past, about the uncertainties of Indian Finance, and to deny those uncertainties would, I think, be impossible, with the fact staring us in the face that, year after year, we have begun the twelve-month with the anticipation of a surplus, and have ended it with the certainty of a very serious deficit. Nevertheless, the more the facts are looked into, the more encouraging do they appear; because, as it seems to me, there can be no question that these financial difficulties and uncertainties have almost entirely arisen from causes which it is within our power to remove, and to remove with no real difficulty. Those causes have, therefore, little actual gravity. If our difficulties had arisen from the decay or want of progress in the resources of the empire, the matter would have been very different. But the very reverse of this is true. Every one of those great branches of revenue which are indicative of the condition of the people has gone on, for several years past, constantly and steadily improving, in a manner which must give us the greatest possible confidence in the future prosperity of the empire. And I think that I may assume that this confidence is fully shared by the mercantile classes, on whom we depend so greatly for the means of carrying out the railways, and the canals, and the other great works of improvement by which we hope to change the whole condition of India, and—perhaps it would not be too much to say—to double, within the present generation, the wealth and prosperity of its people. It is a significant fact that these very unusual measures affecting the finances, which have been adopted in the middle of the year, have not affected in the smallest degree the financial credit of the Government. The price of the public funds is practically the same now as it was before the public learned the whole truth regarding the financial position of the Government.

"The figures which prove unmistakeably the truth of what I have just said—that the resources of India are prosperous and magnificent—are at everybody's disposal. The present year, as we all know, has been one of threatened scarcity, and, in some parts of India, of actual famine. Yet I invite any one to compare the figures of the revised estimate of the current year with those of any year that has preceded it. So great has been the general progress of the country, that even in this year of suffering and of depressed trade, there is hardly one of the great branches of the revenue which does not show improvement. Take the past year 1868-69, and compare the receipts under all the main heads of income with those of the present year. From Land-

revenue, Excise, Customs, Salt and Stamps, we even now, according to the reduced estimates which are before the Council, expect to receive half a million more than we received last year. The single head under which there has been an apparent decrease is that of Customs, from which we expect to receive some £300,000 less. Even this apparently unsatisfactory item seems to me to be in reality altogether encouraging. We must remember that, for the last two years, fifty or sixty millions of people in Northern India, and in other Provinces, have been suffering either the reality or the apprehension of famine. We must remember, also, that the diminution of our Customs-revenue is not due solely to a falling off of trade, but to the fact that, at the beginning of this year, we reduced the tariff valuation of the most important staples of our import trade by about fifteen per cent. If the trade had remained unaltered in amount, this cause alone would have led to a very considerable falling off in our Customs-revenue. Considering these facts, it seems to me a matter for surprise and congratulation, and one that testifies most strongly to the progress which this country is making, that we should now expect to lose this year so small a portion of this branch of our revenue.

"If I were to make the comparison between the present year and years further back, the result would be still more striking. The sources of revenue of which I have been speaking will yield, this year, at least two millions more than they yielded five years ago, and at least two and a half millions more than they yielded in 1861-62.

"I have not referred to the disturbing element of Opium, but I might have included even this source of revenue without weakening the truth of what I have been saying regarding the constant and steady growth of the public income. I will not now take up the time of the Council with any discussion of the difficult subject of our Opium-revenue. But I think it affords an excellent illustration of the great progress of the country that, although in the present year we expect to suffer a loss, compared with the past year, of three-quarters of a million on Opium, such has been the improvement of the other great branches of our income—Land-revenue, Excise, Customs, Salt and Stamps—that we hope to receive from all these sources, including Opium, as large a total revenue, within one hundred thousand pounds, as we received last year.

"I look forward, therefore, with undoubting confidence to the financial future of India, and I think it most important that the public should understand that the Government has not the smallest misgivings on this subject. I believe it

to be certain that, with the exercise of ordinary prudence and economy, we shall be able to place our finances on that thoroughly sound basis which is so especially essential at the present time, when we intend to pledge the public credit so deeply, to enable us to carry out those great reproductive works of improvement on which the future of India so greatly depends. I am satisfied, not only that we shall succeed in this, but that we may reasonably hope that, without the imposition of fresh burdens of an onerous character on the people, the vast and increasing resources of the country will enable us not only duly to discharge the obligation of giving to the people of India a constantly improving administration, but that they will also enable us to carry out those great reforms in our commercial system which, whenever they can be afforded, ought to be adopted, and without which, as I for one believe, we shall not see that full development of the national wealth which it is in our power to secure.

"I repeat, therefore, that the deficits and the uncertainties of Indian Finance are, in my opinion, the temporary accidents of an imperfectly developed financial system; that they can be removed without real difficulty; and that they have not, in the smallest degree, arisen from any failure in the resources of the empire. I have said that they can be removed without real difficulty, because, although I do not underrate the serious character of the work that has to be performed, I do not count as a real and permanent difficulty that sort of opposition with which all great reforms are, I am afraid, pretty certain to be received.

"I do not, my Lord, wish to enter into any details regarding the measures of reform which ought to be adopted in our financial system, but there are one or two points which are so especially important that I should like to say a few words regarding them.

"Above all things, I believe it to be necessary that the Government should seriously determine to carry out the principle, constantly talked about for many years past, but too little acted upon, that the imperial resources shall not be expended for purely local purposes; that local roads, local schools, local works of sanitary improvement, and so forth, must be provided for from local resources, and not from the income of the State. The neglect of this principle has been at the same time a fruitful cause of our financial difficulties, and a constant obstacle to the real progress of the country. It is a principle, the persistent neglect of which would lead the finances of the richest country in the world to inevitable ruin.

"Then, again, I think it clear that some plan must be adopted for giving to the Local Governments, with whom the actual administration of nearly the whole of India rests, some real incentives to economy. It has been truly said that under the present system, every Local Government has a purse to draw upon of unlimited, because of unknown, depth. The Local Governments have now no financial responsibility, and no means of knowing what amount of money they may legitimately consider to be the income, and the measure by which their annual expenditure must be regulated. They see on every side the necessity for improvements, all of them, perhaps, involving fresh expenditure, and their constant—and I will add, under the existing system, justifiable and proper—desire is to obtain for their own provinces and people as large a share as they can persuade the Government of India to give them out of the general revenues of the empire. I am satisfied that there will be no real local economy, and no complete and really effectual check on our constantly increasing expenditure, until there has been placed upon every Local Government a specific responsibility for maintaining an equilibrium between its income and its expenditure. I am convinced that this object can be obtained without the sacrifice of one iota of the authority of the Supreme Government, and without the abandonment of a particle of that rigid and complete control over the finances of the empire which I believe it to be absolutely necessary that the Supreme Government should most jealously preserve.

"There is one other point which I wish briefly to notice. I have already referred to the unfortunate fact that the measures of fresh taxation and of retrenchment which have been ordered, or which are contemplated, by the Government, must cause hardship to individuals. I fear that it must be anticipated that the Government of India will not find it an easy task to carry out these reductions of expenditure. Everybody who is personally interested in any particular reduction finds little difficulty in showing that it is a piece of miserable and cheeseparing economy, which can produce no real effect in relieving the finances; which must cause ruin to deserving men, or serious injury to the public service; and astonishment is expressed that the Government cannot see the propriety of making the necessary reductions of expenditure in some other and very obvious way. I know hardly a single retrenchment which the Government has had under its consideration, of which something of this sort has not been, or will not probably be, said. Nevertheless, the fact remains that, unless indeed we choose to accept the inevitable consequences, we cannot spend money which we have not got. The Government has adopted the best means in its power for arriving at correct conclusions in regard to the retrenchments that ought to be made. It may no doubt, in its economical

zeal, have made, and may make, mistakes, and, whenever it is satisfied that it has done so, it will, I am sure, at once admit them. But I hope that the public will remember, and that it will support the Government in remembering, that it is really by means of these accumulated economies, often so insignificant individually, that we hope to accomplish the task, without which (unless we have recourse to fresh and burdensome taxation) we cannot bring our finances into order, of reducing our annual expenditure by two millions of money. This is no easy task, and it will not be accomplished unless the Government of India resists unflinchingly, except for the most conclusive reasons, every representation and every entreaty tending to interfere with any reduction of expenditure, however individually insignificant, which it believes to be possible. Your Excellency's anxiety has already been publicly declared that no effort should be spared to diminish, in every possible way, the hardship which must follow from the reductions which have been ordered, or which are contemplated, in existing establishments. Serious as those reductions in some cases are, I am sure that if the orders of Your Excellency's Government are received by the local authorities in the spirit in which they were issued, and the opportunity be taken of weeding from the public service men who are notoriously inefficient, and who have no claims to consideration, the hardship to the really deserving servants of the State may be reduced to comparatively small proportions.

"I have only one other thing, my Lord, to say. I wish to take this opportunity of stating publicly my sense of the very great obligations which the Government is under to the Financial Secretary, Mr. Chapman, for the great ability and untiring zeal with which he has conducted the duties of his important office. My Hon'ble friend, Sir Richard Temple, made a most fortunate choice when, not long before he left India, he nominated Mr. Chapman to this post, and I feel very strongly that if any credit be due for anything that has been done in the Financial Department during the last six months, the lion's share of that credit must be given to Mr. Chapman."

His Excellency the President:—"After the very great amount of information which has been placed before the public, both in the Financial Despatch which we addressed some time ago to the Secretary of State, and also in the clear statements which have been made here to-day, as to the reasons and causes which rendered it incumbent on the Government of India to take the unusual course which has been adopted with regard to Imperial Finance, I have but few additional remarks to make. Nothing has been kept back. Everything has been fully described; the means which we

propose to take to remedy the evils which exist have been also, as far as is possible, laid with the utmost care before the Council; and it is gratifying to me, as it must be to my colleagues in the Executive Government, to know that, however much the public, in common with us, may regret the necessity of the course we have taken—however much some of the details of the proposals we have made may be criticised—yet we have received, both from the public, as far as we can judge, and certainly from the Press, a generous, and, I may almost say, a cordial approval. I have little doubt that those sentiments which have been so generally expressed in India will be shared in by Her Majesty's Government and public opinion at Home, and that every candid man will, on careful consideration of the facts of the case, come to the conclusion that the course we have followed was the wisest and safest that could have been taken under the peculiar circumstances of our position.

"I am quite aware that the step we have taken is most unusual, but it is not unprecedented. If history is examined and enquiry made into occurrences that have taken place in countries where a representative system of government is in full force, it will be found that, on special occasions, a similar proceeding has been adopted.

"In England, financial changes cannot take place except during the sitting of Parliament. But occasions have arisen when Parliament has been called together at unusual periods for the purpose of dealing with a financial crisis, or to provide for a financial necessity. But although, happily, the necessity for such a course being taken has not very recently arisen in England, precedents may be found, sanctioned by the highest authorities, where such courses have been found absolutely necessary and entirely justifiable. Such a case has arisen here.

"I have said that its necessity must appear to any man to be absolute. Now, there were only two courses open to the Government of India. Every one can form an opinion on the matter, for our financial position has been before the public for nearly two months. The facts, as we have described them in our financial despatch, being fully known and verified, we had either to adopt a policy of concealment or of candour. Had we adopted the first course, we must have placed ourselves in this position:—we must have remained in a state of silence till next March, with the full knowledge that the public were under a grossly erroneous impression as to the true financial state of the country. This was a position in which I think no body of honourable men could for a moment have thought of placing themselves. I must say in justice to my colleagues that the resolution to take, at the earliest possible moment, the public into

the confidence of the Government was unanimously agreed to, and that, as soon as our financial position was ascertained beyond a doubt, we felt that it was our duty to lay those facts unreservedly before the public, and ask for its generous support in the measures which we have deemed it indispensable to propose.

"Some slight foreboding was certainly expressed in one or two quarters. It was said that by the premature disclosure of the real financial state of the empire, we should run the risk of damaging national credit and throwing a general air of discredit upon the whole proceedings of the Government.

"I, in common with my colleagues, took a different view, which I think the result has shown to be the right one; for though the statements which were made have been now for a considerable time before the public, we have found that the financial credit of the country has not been seriously damaged, but that the public, knowing the worst, and feeling and appreciating the efforts of the Government to deal with the difficulty, have seen that these difficulties can be surmounted, that there is no real danger to the permanent financial position of the empire, and that administrative reforms and strict adherence to the ordinary rules of economy and prudence, are all that is necessary to place our fiscal affairs on a sound and healthy basis.

"I rejoice therefore that, casting aside the adherence to general routine, we adopted this course. I am not at all insensible to its disadvantage and its manifold inconvenience; it is certainly not a line of action I should ever desire to repeat, and I am strongly of opinion that, except under the most extraordinary circumstances, it would be quite unjustifiable.

"But when we look to the situation of affairs—when we look at the State deficit into which we were for a fourth year about to be plunged—when we knew that means were in our power to avoid the evil—I think the public will agree with me in saying that routine and ordinary rules of administration were not considerations that ought to guide or control the Government at such a time.

"There is no doubt that a great deal of the evil that has existed for some years has been owing, not so much to the fault of the administration, as to the circumstance that the Government have never been in possession of the great financial facts of the year at a sufficiently early period to make real use of them for the purposes of administration. I am quite aware that there are great difficulties in this matter, and when people compare our system with that of a small, rich and compact country like England, they entirely forget the enormous size of

this empire—the great distances which exist—the variety and complicated nature of our accounts—the amount of adjustment which is necessarily carried on between various treasuries and various accounting bodies—and also that the system which has been in existence in England for a very long period has only been recently introduced into India, within, I may say, half the time of what may be called the present generation. Therefore, when men blame us for inaccuracy of forecast they must also recollect the peculiar circumstances of such an empire as India.

"There is no doubt, also, that the cause of our present position is owing very much to the inaccuracy of forecast which has for some years existed; but I believe that, by care and firmness in administration, a great portion of the inconveniences which are occasioned from a want of early knowledge of the actual current and financial position of the empire, can be obviated. The evil is one of great magnitude, and is shown most by the discrepancy which has taken place within the last four years between the budget-estimate and the actual revenue and expenditure.

"Now the figures I am about to lay before you are very suggestive, and show how necessary it is that the Government should use every effort in its power to improve and to prevent the recurrence of the state of things which they disclose. I am far from saying that a recurrence can be altogether prevented during the present year or the next, or that, at any time, precise positive accuracy can be arrived at; but I am certainly convinced that, as the true merits—the publicity, safety and many advantages—of the budget-system become more closely brought home to the minds of the vast army of officials who serve the Government of India with such ability and devotion, these evils will gradually disappear.

"Now, I find that in 1866-67 we budgeted for a deficit of £72,800, the real deficit turning out to be two millions and a half.

"I find that in 1867-68 a surplus of £1,764,478 was budgeted for, the result being a deficit of one million.

"In 1868-69 I find that a surplus of upwards of two millions was budgeted for, but a deficit of two millions occurred. In 1869-70 a surplus of £52,650 was budgeted for, but a deficit of nearly two millions is expected. I attach no blame to any one for this. I am fully aware that explanations, more or less satisfactory, may be offered, and that, during the periods I have mentioned, the fiscal policy of the country was more than once changed during the financial year; but,

nevertheless, the facts I have mentioned are incontestable, and betoken, to my mind, a position of danger which ought to terminate. It is a state of things, at all events, which is sufficient to justify us in using every effort to obtain, at the earliest possible moment, such knowledge with regard to our revenue and expenditure as will enable the Government to act, if necessary, according to the information that it receives. Revenue must always fluctuate to a certain extent. Expenditure may occasionally exceed the amount budgeted for, though it is more under control; but it is clear that no administration can be conducted with safety and with success, unless events connected either with revenue or expenditure are known to the controlling power almost at the time of their occurrence.

"I believe, therefore, that by invoking the assistance of every department of the Government in preventing delay in forwarding useful information—in trying as far as possible to avoid the leaving of any unequal or unusual disbursement to the end of the year—in endeavouring as far as possible to spread the expenditure over those months of the year in which it generally occurs, I think that by this means, and also by great efforts on the part of the Government of India in condensing, analysing and bringing to use the information at their disposal, much of what has already occurred may for the future be avoided.

"I hope it will not now be supposed, from the remarks I have made, that it is my belief that accurate information has been supplied to the Government. On the contrary, I believe the information which has been placed at the disposal of the Government is thoroughly accurate and completely trustworthy. But what I object to is, that that information is often given too late, and the details are not available in sufficient time to make them thoroughly useful for administrative purposes. I believe that, considering the great power of this Government, and looking also to the great advantages which it possesses in having in its service so many able and experienced officers, there can be really no substantial difficulty in obtaining at an earlier moment the vast amount of information which is in every year so carefully collected, and which has generally been found to be so thoroughly trustworthy.

"I wish to say that we have embodied these opinions in a despatch to the Secretary of State, and I have little doubt that, in the efforts we intend to make in this direction, we shall receive the hearty approval and support of Her Majesty's Government.

"I have merely now to say, on the part of the Government of India, how deeply we feel the general support which has been given, both by Local Governments, and also by the public generally, to our proposals as a whole.

"When the financial position was at first disclosed, I received from many quarters the most hearty assurance of active assistance. From Madras, whose Government was the first to come forward without any invitation or suggestion on our part, we received by telegraph on offer saying that, if necessary, they were ready to add a considerable amount to the salt tax in that Presidency.

"The proposal was immediately acquiesced in by Bombay, and I may say that, though there may be some differences of opinion as to the details of the reductions we proposed, we have never received any expression of doubt as to the necessity of the case, or as to the duty of the Local Governments to assist to the utmost of their ability the Government of India in the difficult and arduous task which we have undertaken.

"We all know there must always be a considerable difference of opinion among men who are engaged in the conduct of great affairs, especially if they happen to be Englishmen; yet still I believe there has never been known an instance in Indian history that in any great crisis the Local Governments failed in their duty and refused their support to the Supreme Government. I can only say, as it has happened before, so it has now, that the Government of India is most anxious to defer in all matters under discussion to those opinions; but at the same time we must express our firm determination to arrive, at all hazards, and in the shortest time, in the least objectionable manner, at the great financial result at which we aim.

"We are engaged in great interests, and dealing with enormous sums—we are engaged in an attempt which may be summed up in two or three words. We have to change the fiscal condition of this country in such a way as to give, at the earliest possible moment, a financial advantage of upwards of three millions of money.

"I am now speaking, not only the opinion of the Government of India, but also that of the Secretary of State, when I say that it is decided that—looking to the many fluctuating items in the resources of the country, to the risks to which we are liable, and the magnitude of the interests involved,—unless such a result is obtained, it cannot be said that Indian Finance stands upon a sound and substantial basis.

"Although the effect of this great reduction of expenditure may be, in a few cases, somewhat to injure individual interests, or, what is far more important, to postpone for a such period of works of usefulness in which we are all deeply interested; yet, by making this sacrifices now, we shall lay up for ourselves a great store of safety and welfare for hereafter; for unless such a course is taken, we cannot hope to carry on with success, and finish within any reasonable time, great works of improvement which are so necessary to the life, the comfort, the health, and safety of the people, and to the speedy completion of which the honour and the credit of this Government are so irrevocably pledged."

The Motion was put and agreed to.

SALT (MADRAS AND BOMBAY) BILL.

The Hon'ble MR. STRACHEY introduced the Bill to enhance the price of salt in the Presidency of Fort St. George and the duty on salt in the Presidency of Bombay, and moved that it be referred to a Select Committee with instructions to report in a week. He said—

"My Lord,—It may be convenient that I should first state, for the information of the Council and of the public, the circumstances which have led to the introduction of the present Bill.

"It will be remembered that, when my Hon'ble friend Sir R. Temple laid before the Council his Financial Statement in March last, he stated that the question of the revision of the salt-duties throughout India had been, and was still, engaging the anxious consideration of the Government. He said that the inequality in the rates of duty and in the market-prices of salt in different portions of the empire was to be deplored, and that, although there were financial and other obstacles in the way of equalising the duties and price, the Government would keep this steadily in view as an object for ultimate attainment.

"Your Excellency and the Council well know how great an interest was at all times taken in this question by the late Viceroy, Lord Lawrence; and the measures which were inaugurated before he left this country, and which have been vigorously followed up since Your Excellency's arrival, will, I trust, produce a great effect in cheapening the price of salt in those parts of India where the supplies are the most deficient, and the prices highest. Of those measures, which will, if successful, help to pave the way at some future time to the accomplishment of that great desideratum, the equalization of the salt-duties throughout India, I shall have to speak more particularly

when I introduce the Bill standing in my name, to provide rules for the manufacture and sale of salt in Northern India.

"Much opprobrium, which, in my opinion, has been altogether undeserved, has often been thrown upon the Government of India for the policy under which it raises every year a very large revenue from salt. I shall have hereafter to state the reasons which have satisfied me that, in some provinces of India, we have adopted systems in regard to the salt-revenue of a most objectionable kind; systems which have enhanced the price of salt to such an extent, and which have rendered the obtaining of adequate supplies of salt so difficult, that very serious hardship has been caused to the people. Of the evils of those systems I have not now to speak, but I hope to state, on the proper occasion, what the Government has been doing to remove them.

"These evils, however serious,—and no one can think them more serious than I do,—are nevertheless evils which do not affect the propriety of the principle of levying a revenue from salt. On this subject I should like, with Your Excellency's permission, to read to the Council an extract from a despatch which the Government of India not long ago received from the Secretary of State. I wish to quote this passage, not only because it expresses, as I think, with admirable lucidity and truth the principles by which we ought to be guided in this matter, but because it will show to the Council and to the public, in the most authoritative way possible, the views which the Government at Home and in India holds, and on which it intends to act.

'I do not concur,' wrote the Secretary of State, 'with those who speak of entertaining a very strong feeling as to the political morality of taxing such an easily and widely produced necessary of life as salt. The justification which has been suggested as the only one for this tax, is the only justification of any tax whatever, namely, that the produce is spent for the benefit of the people, and that it is so levied as to be as little oppressive as possible. On all grounds of general principles, salt is a perfectly legitimate subject of taxation. It is impossible in any country to reach the masses of the population by direct taxes. If they are to contribute at all to the expenditure of the State, it must be through taxes levied upon some articles of universal consumption. If such taxes are fairly adjusted, a large revenue can be thus raised, not only with less consciousness on the part of the people, but with less real hardship upon them than in any other way whatever. There is no other article in India answering this description upon which any tax is levied. It appears to be the only one which at present, in that country, can occupy the place which is held in our own financial system by the great articles of consumption from which a large part of the imperial revenue is derived. I am of opinion, therefore, that the Salt Tax in India must continue to be regarded as a legitimate and important branch of the public revenue. It is the duty, however, of the Government to see that such taxes are not so heavy as to bear unjustly upon the poor, by

amounting to a very large percentage upon their necessary expenditure. The best test whether an indirect tax is open to this objection is to be found in its effect upon consumption.

'I observe that several of the officers whose opinions upon this question have been given in the papers before me, found that opinion upon what they have heard, or what they have not heard, in the way of complaint among the Native population. But this is very unsafe ground of judgment. It is one of the great advantages of indirect taxation, that it is so mixed up with the other elements of price that it is paid without observation by the consumers. Even at home, where the people are so much more generally educated, and more accustomed to political reasoning, the heavy indirect taxes formerly levied upon the great articles of consumption were seldom complained of by the poor. They were not themselves conscious how severely they were affected by those taxes, and how much more of the articles they would consume if the duties were lower. But, whilst this peculiarity of indirect taxation makes it a most convenient instrument of Finance, it throws additional responsibility upon all Governments which resort to it, to bring the most enlightened consideration to bear upon the adjustment of taxes which may really be very heavy and very unjust, without the fact being perceived or understood by those on whom they fall.'

"This extract from the Secretary of State's despatch completely explains the general policy which the Government of India desires to follow in respect of this very important question.

"A copy of this despatch was communicated to His Excellency Lord Napier, the Governor of Madras, but without any intimation of the wishes of the Government of India. The question was then taken up, quite spontaneously, by Lord Napier, whether the Provinces under His Excellency's administration might not co-operate in the great work of giving to the people of less fortunate parts of India an ample supply of salt; in equalizing the duties; and in getting rid of the inland preventive customs lines which now intersect the country, and the maintenance of which involves most serious expense, vexation, and prejudice to the general freedom of traffic. 'The Government of this Presidency', Lord Napier said, 'is not asked to make a sacrifice for a revenue-interest merely: it is asked to make a sacrifice for the welfare of the greater number of Her Majesty's subjects, and for the general good of trade'.

"Considering that the duty on salt in the Madras and Bombay Presidencies was only one rupee eight annas per maund of 80 lbs., while in Northern India it was three rupees, and in Bengal three rupees and a quarter, it was clear that an increase in the duty levied in the minor presidencies might help to facilitate hereafter the equalization of the duties throughout India. The reduction of the duties now levied on this side of India to the level of those

levied in Madras and Bombay was evidently, for financial reasons, altogether impossible.

"But the first duty of the Government of Madras was clearly towards its own people; and the first step, therefore, which it took, was to institute a careful inquiry into the question, whether a moderate increase of the duty on salt could be made without hardship to the people, and without danger of causing a diminution of consumption, or of interfering with the progress of the salt-revenue. The elaborate inquiry which was made satisfied the Government of Madras that there would be no serious objection to immediately raising the price of salt by three annas a maund, and they proposed, in the event of this change not being attended with bad consequences, to made subsequently a further addition to the price, of two annas more, thus making the Government price two rupees per maund. Subsequently, on a reference being made by the Government of India, the Madras Government agreed to make the full increase at once.

"The evidence by which the Government of Madras was satisfied that this increase might be made to the price of salt, also satisfied the Government of India, and the result, pending the consideration of the matter by the Legislature, was the issue of Your Excellency's Ordinance of the 4th October. I will tell the Council, as briefly as possible, the nature of the grounds which lead us to believe that this measure will not lead to a falling off in the consumption of salt by the people of Southern India. If I can satisfy the Council that we have good grounds for this belief, I shall have proved my case; for the best, and indeed the only, test by which we can judge whether such a tax as this bears unjustly upon the poor, is (as the Secretary of State remarked in the extract which I have read to the Council) its effect upon consumption.

"The papers received from the Madras Government show that for many years there has been constant and very large progress in the consumption of salt, and that this progress has apparently not been affected by the increases of duty which have, from time to time, been made. I will not quote figures except those for the last fifteen or sixteen years. They show that the average annual quantity of salt sold in the Madras Presidency, in the four years ending with 1855-56, was 446,000,000 lbs. During this period the selling price of salt was one rupee per maund. In the ten years following 1855-56 the price of salt was increased seventy per cent., or from one rupee to one rupee eleven annas a maund. In August 1859 the price was raised from one rupee to one rupee two annas. In April 1861 it was raised to one rupee six annas; in June of the same year it was again raised to one rupee eight annas; and in

March 1866 it was fixed at one rupee eleven annas, the price which has been maintained ever since. Nevertheless the consumption gradually rose from 446,000,000 lbs., until in 1865-66 it amounted to 665,000,000 lbs. It has continued to increase since, and the Salt Revenue which in 1855-56 was £541,000, was £1,010,000 in 1865-66, and £1,110,000 in 1868-69.

"It must of course be admitted that there is a certain amount of risk in a measure of this kind; but I think that when the figures which I have just quoted are considered, and when we remember the great improvements that have taken and are still taking place in the means of internal transport, and the increase of wealth in the country, we may safely accept the conclusions at which the Madras Government and the great majority of its most experienced officers have arrived. I ought also to mention that these conclusions are not those of the officers of Government alone; and I may properly quote to the Council the opinion recorded by a mercantile firm at Madras, which deals largely in salt, and which is directly interested in preventing any such enhancement of price as would tend to reduce consumption, and consequently to reduce its own profits. These gentlemen have given a very valuable statement of their opinion, and I will read a portion of it to the Council.

'We commenced,' they say, 'this business in July 1856, when the monopoly-price was only one rupee per maund, and notwithstanding the frequent rise in the price of salt, we always found the sales improving. So soon as an increase in the Government price was proclaimed, the sale was of course checked for a time; but the public was soon reconciled to the new *nirikh*, and in due course the consumption improved. * * * Our experience does not warrant any fear of a fall in consumption by an increase in the price of salt, provided it is not out of proportion with reference to other articles of provision. Salt is a necessary of life, the same as rice, which must be consumed in certain proportions to secure health. To consider then to what extent this tax could be increased without disturbing the equilibrium in the domestic concerns of the Natives, we must examine the rise in the cost of food-grain within the last fourteen years; and if we find that the public in general is in a position to pay for this necessary of life the higher price, with greater facility than they did prior to 1856, it is safe to admit that, in the same proportion, the price of salt can be increased without running the risk of reducing consumption.

'It is an unquestionable fact that India is now more prosperous than it was fifteen years ago. The great demand for the raw produce of the country has caused, within this time, a large import of the precious metals, so that every article of produce now realizes double the value paid for the same articles years ago. The cultivators benefit largely by this improvement in the value of the produce of their fields, and the artizans, tradesmen, and labourers have all benefited by the rise in the value of the labour-market. If this were not the case, we could not expect the people to live quiet and happy while articles of consumption, and daily necessaries of life, have been selling at twice the price paid in olden times. This is how we account

for an increase in the consumption of salt since 1856, notwithstanding that the monopoly-price has been increased within that time by seventy per cent. * * If an increage in the revenue becomes indispensable for the better management of the government of the country, it seems to us that the rate of excise-duty fixed on salt may be raised to two rupees or two and a quarter rupees per Indian maund.'

"There is another reason which helps to support the opinion that this increase of duty will not check consumption. Even in Lower Bengal, where the ordinary price of salt is about double what it is in Madras and Bombay, it cannot be asserted that the people are suffering from insufficiency in the supply of salt, or that the comparatively high price is a serious check upon consumption. If this be true of Bengal, the mass of the people of which are certainly not better off than the people of Madras and Bombay, there is little reason for fearing that an addition of a few annas per maund to the price of salt will check consumption in those presidencies.

"I think, my Lord, that in accepting these proposals of the Madras Government, we cannot, as Your Excellency has already observed, acknowledge too fully the enlightened and public-spirited manner in which that Government has, of its own accord, proposed to place fresh burdens upon its own people, with the object, not only of relieving the financial necessities of the empire, but of assisting the Supreme Government to carry out hereafter the work of equalizing the duties upon salt, and of thus conferring a great benefit on other Indian Provinces.

"The Council is aware that the Government of Bombay has also agreed to a similar increase of the duties levied upon salt in that Presidency. It will be understood that a duty of one rupee thirteen annas per maund, the amount proposed in Bombay, where the salt-revenue is raised under a system of excise, is equivalent to a selling-price of two rupees a maund in Madras, where the salt is manufactured by the Government. The difference of three annas a maund represents the cost of manufacture.

"I cannot give for Bombay such detailed reasons as I have given for Madras, for believing that this increase of duty will not diminish the consumption of salt. But considering the comparatively greater wealth of the people of the Bombay Presidency, I see no reason for doubting that a proper conclusion has been arrived at, and that there is even less danger in the case of Bombay, than in that of Madras, that we may find hereafter that we have made a mistake. I have not been able to obtain satisfactory statistics of the consumption of salt in past years in Bombay, but the revenue has largely and

pretty steadily increased from £374,000 in 1861-62, to £511,000 in 1867-68. The estimate for the present year was £580,000.

"I hope, my Lord, that I have made it clear to the Council that this increase of the salt-duties in Madras and Bombay is not proposed simply as a means of adding to our resources in the present time of financial pressure, and that, independently of the gain to the revenues, we hope that other and very important advantages may be ultimately facilitated by it. Its adoption will undoubtedly be a step, to some extent, towards the equalization, at some future time, of the salt-duties throughout India, and towards the abolition of one of the most serious evils from which the country now suffers,—the Inland Customs line, which now stretches right across India through a length of 2,700 miles, and which requires for its maintenance a host of petty officials numbering some 16,000 men.

"At the same time, I must say for myself personally, that I have admitted with a good deal of reluctance the propriety of the present measure. When, on former occasions, outside this Council, an addition to the rate of duty levied upon salt in Madras and Bombay has been proposed, I have felt that it was hardly right to increase the burdens which fall on the poorer classes of Southern India for the sake even of such an important object as the equalization of the duties throughout India, and of cheapening the salt consumed by the people of the Bengal Presidency. I have felt that, if the state of our finances should allow, it would be more just to meet the cost of the necessary reforms by other means, rather than attempt to relieve one portion of the labouring population of India at the expense of another portion of the same class in other provinces.

"But other reasons for this increase of duty have now come into play; for it has become necessary, on account of the general necessities of the empire, to take every practicable means of adding to our financial resources. Under such circumstances as the present, I am satisfied that this measure is thoroughly right; and while I mainly justify it to my own mind on grounds of financial necessity of an imperial character, I feel how valuable the ultimate results of this measure may be in helping us hereafter, when financial considerations may allow, to confer a great benefit upon the people of this side of India.

"When the Railways through Rájpútána and to the Salt Mines of the Panjáb are completed; when we obtain the benefit of the great development of the supply of salt from the Sambhur Lake, to which we are now looking forward, and for which we have to thank the enlightened policy of our Hon'ble colleague in this Council, His Highness the Mahárájá of Jaypúr; when the

local manufacture of salt in Oudh and in the North-Western Provinces is properly established; when these and other measures are carried out, and there has been full time for them to produce their complete effect, we may hope that it may become practicable, and, indeed, that it may become financially profitable, to reduce the duties upon salt in this Presidency and to assimilate them to the duties imposed in Madras and Bombay. But on this part of the subject I will not now take up more of the time of the Council, because I shall find a more appropriate opportunity for explaining the views and expectations of the Government, in relation to these matters, when I have to introduce the Bill for regulating the local manufacture of salt in Northern India.

"I have said nothing of the probable increase of revenue which this measure will give us, because my Hon'ble friend Sir R. Temple has already said all that is necessary on this part of the subject."

The Hon'ble SIR RICHARD TEMPLE said that, at this late hour, he did not intend to take up the time of the Council, except to express his concurrence in the measure proposed by the Hon'ble Mr. Strachey. Certainly he (SIR RICHARD TEMPLE) for one had felt that the existing differential rates of duty between Bengal, Madras and Bombay were quite indefensible and could not be maintained. Knowing what he did of the population of various parts of India, he deemed it unreasonable that the people of the Madras and Bombay Presidencies should pay a duty on salt of only one-half of what was paid in the North-Western Provinces and the Panjāb, and less than one-half of what was paid in Bengal. The people of Madras and Bombay, generally speaking, were quite as well off as those in Northern India and the Provinces of Bengal Proper. He did not say that the duty in Madras and Bombay should be raised up to the rates paid in Bengal and the North-West; but we should endeavour as far as possible to reduce the inequality; and he was glad that the present financial difficulties should have caused one step to be taken in that direction.

He concurred also as to the objection to maintaining the lengthy line of Customs frontier in the central part of India. But in order to do away with that Customs line, there would be a necessity to raise the duties even higher than what was proposed to-day.

Major-General the Hon'ble SIR HENRY DURAND said that, on a former occasion, when the question of reducing the duties on salt in the Bengal Presidency was under consideration with the late administration, he opposed the measure, not because the reduction of duty contemplated was, in his opinion, an unimportant measure, but because our finances were not then, in his opinion,

in a state to admit of such a reduction. He thought that the present state of our finances proved that he was quite right.

He had always entertained a very strong feeling against the expediency of raising anything more in the shape of a salt-duty than could possibly be avoided; for the necessities of the State were the only possible excuse for raising duties which pressed on an article of daily and indispensable consumption by the people.

The proposal before the Council had, however, his concurrence, because he thought that the imposition of the small additional duty could not materially put any great burthen on the people. He was under the conviction that the Madras ryots were better off than the Bengal ryots. He was also under the impression that the same might be asserted of the Bombay ryots, though he had not trustworthy data to prove the opinion which he entertained. The ryots of both those presidencies were at least on a par with, if not superior to, the condition of the ryots in the North-Western Provinces. He felt therefore that, when the necessities of revenue demanded peremptorily an increase, such a measure as was proposed was justifiable, although he viewed with extreme jealousy every additional burthen laid on the agricultural population of this country. He did so, not only with respect to their own welfare, and the progress of India, but also with regard to our position in this country and to the intimate connexion of the welfare of England with that of India.

With an industrious and not unintelligent population of many millions—with an immense area of most fertile land—with climates of such great variety, that not only all tropical produce, but also every kind of cereal and even the products of the temperate regions, were yielded in abundance—with great natural resources in minerals,—the one great difficulty which the country from the vastness of its size had to contend with, was the great distances which produce had to traverse before it could reach the coasts, and the imperious condition which this entailed that the cost of produce should not be enhanced by dear labour. The wealth of India depended in a great measure on the price of labour. Cheap labour was almost an essential condition of success. It was, therefore, in his opinion, of enormous importance, not only with reference to India itself, but also to the requirements of England and its commerce, that the Government of India should, as far as might be in its power, keep down and not increase the difficulties which beset the agricultural classes of India when competing with foreign nations under the disadvantage of the long lines of communication by which the produce of the empire could alone reach the coast and its harbours.

Still, when the necessities of administration demanded it, as they now did and vigorous efforts had to be made to restore a financial equilibrium between receipts and expenditure, a measure of this kind appeared to him abundantly justifiable, and was one which he could cordially support.

The Hon'ble MR. TAYLOR said he had not intended, when he came to the Council to-day, to offer a word of remark on the Bill to enhance the price of Salt in the Presidencies of Fort Saint George and Bombay. He was aware that the Governor of Madras, with the concurrence of His Excellency's Council and of other local authorities, had himself come forward and proposed the measure; and he was prepared, in view of the financial position of the empire and for the other reasons placed before them in detail by Mr. Strachey, to support, without comment, the motion of his Hon'ble friend. After what had fallen from their Hon'ble colleague, Sir Richard Temple, he felt bound, however, to say a few words. It was not his (MR. TAYLOR'S) purpose to argue the question whether the condition of the rural population was generally better in Madras and Bombay than in Bengal and Northern India; in fact, he was quite ready to admit that the ryots of Southern and Western India were, as a rule, more wealthy and more prosperous than the ryots of Bengal. Without the fullest information as to details, it was impossible to discuss with advantage so large and important a question as this,—the comparative ability of the people of different parts of the empire to bear any particular form of taxation. There were many circumstances to be taken into consideration before it could be said, with any approach to certainty, that because a certain tax of such and such an amount was paid in Madras, therefore it might as easily and as safely be levied in Bengal, or *vice versâ*. In the case of salt, it might be said with much truth and fairness, that the ryots of the south pay a higher land-revenue per acre, and were subject to numerous local cesses of various kinds from which the ryots of this part of India were exempted; therefore, to raise the price of their salt to the Bengal standard would be both impolitic and unjust. Of course, there were other considerations, telling, perhaps, both ways, upon which it would be unprofitable to enter now. After all, the real test of the policy of any measure for the enhancement of the salt tax was, its effect upon the consumption of the article. If it be found that consumption had gradually increased, in spite of periodical additions to the rate of duty, that was *primâ facie* proof that the duty was not yet too high. But he was very strongly of opinion that the point might be reached, and had nearly been reached as regards Madras, beyond which they could not safely go without risking a diminution of consumption and a consequent falling off in the revenue. In all their previous discussions on this

question, as his Hon'ble colleagues in the Executive Council were aware, he had steadily resisted the proposal to increase the rate of salt-duty in Madras, not only for the above reasons, but mainly on the ground that, even with the present comparatively low duty, the rate of consumption per unit of the population was still below the minimum which was considered essential to health in other countries. He gave way on the present occasion, because the proposal was supported by the highest local authority, and in the hope that it might prove on the whole successful and beneficial. He did so with the less reluctance because he believed that any approach to an equalization of the salt-duties of the north and south must lead to the abolition of the long Customs line throughout Central India, the disastrous effect of which upon the trade and prosperity of this country was indisputable, and the existence of which he had always considered to be a blot on our administration.

So far, however, from agreeing with the opinion expressed by his Hon'ble colleague, Sir Richard Temple, he hoped the day was not far distant when it would be found practicable to reduce the salt-duties throughout the whole of the empire to the level which now obtained in Madras and Bombay.

His Excellency the President said:—"I must remind the Council, as to this question of salt, that all our action in relation thereto must be guided mainly by the state of our finances.

"It may be thought by the public, from what has been said to-day, that the Government have come to a definite conclusion as to the amount of duty that ought to be levied throughout India on this article of prime necessity. I should be sorry if so erroneous an opinion were held, and, speaking generally, I fear that, looking to our present necessities, there is no immediate prospect of our being able to make any very large reduction in the present duty levied in Bengal and Northern India.

"The question is one of great importance. It must enter into the calculation and consideration of all matters connected with Indian economy; but seeing that such a very large sum is raised from the duty, and also that the financial pressure may probably for some time exist, I feel it my duty to express my opinion that an immediate lowering of the duty on salt to the amount now raised in Bombay and Madras is not likely to be found practicable.

"I agree in much that has been said as to the evils of the present system, more especially in the Hon'ble Mr. Strachey's remarks as to the Customs line.

In all our financial considerations we should keep this subject in mind, with a view to its reduction and ultimate abolition. The measures now before Council will, it is to be hoped, tend in that direction, and will be the first step towards the destruction of a system in favour of which there is hardly anything to be said.

"I heartily concur in the remarks which have been made with regard to our colleague, His Highness the Mahárájá of Jaypúr. I happened to be personally acquainted with all the transactions that took place at Simla with regard to the agreement entered into with His Highness as to the Sambhur salt-lake, and I have great pleasure is saying that His Highness came to the consideration of the subject with an evident and a sincere desire to deal with it in a spirit of justness and fairness; and I may add my hopes that the arrangement come to will not only be in the end profitable and honourable to the Jaypúr State, but that it will also confer great and immediate advantages upon many thousands of the subjects of Her Majesty."

The Motion was put and agreed to.

ALIMENTARY SALT (N. W. P., &c.) BILL.

The Hon'ble MR. STRACHEY asked leave to postpone the introduction of the Bill to provide rules for the manufacture, storing and sale of alimentay Salt in the North-Western Provinces, the Panjáb, Oudh and the Central Provinces.

Leave was granted.

RAILWAY BILL.

The Hon'ble MR. STRACHEY also moved that the Hon'ble Messrs. Cockerell and Gordon Forbes, Colonel the Hon'ble R. Strachey and the Hon'ble Mr. Chapman be added to the Select Committee on the Bill to amend Act No. XVIII of 1854 (relating to Railways in India).

The Motion was put and agreed to.

CONTRACT BILL AND NEGOTIABLE INSTRUMENTS' BILL.

The Hon'ble MR. STRACHEY also moved that the Hon'ble Messrs. Cowie and Bullen Smith be added to the Select Committees on the following Bills:—

To define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership.

To define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

The Motion was put and agreed to.

The following Select Committees were named:—

On the Bill to enhance the duties leviable under the Indian Income Tax Act—The Hon'ble Messrs. Cockerell, Gordon Forbes, Cowie, Chapman and Bullen Smith and the Mover.

On the Bill to enhance the price of Salt in the Presidency of Fort Saint George and the duty on Salt in the Presidency of Bombay—The Hon'ble Sir Richard Temple, the Hon'ble Messrs. Cockerell, Gordon Forbes and Chapman and the Mover.

The Council then adjourned to Friday, the 26th November 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl.
for making Laws and Regulations.

CALCUTTA,
The 19*th November* 1869.

Govt. Central Press.—No. 228 L. D.—17-4-81.—10.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 21 & 25 Vic., Cap. 67.

The Council met at Government House on Friday, the 26th November 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

His Highness Sarámade Rájáhác Hindústán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur, of Jaypúr, G. C. S. I.

ALIMENTARY SALT (N. W. P., &c.) BILL.

The Hon'ble MR. STRACHEY introduced the Bill to provide rules for the manufacture, storing and sale of alimentary salt in the North-Western Provinces, the Panjáb, Oudh and the Central Provinces, and moved that it be referred to a Select Committee with instructions to report in a week. He said that, when he introduced the Bill for enhancing the duty on salt in the Presidencies of Madras and Bombay last week, he referred, in general terms, to the policy which the Government proposed in future to follow in regard to the management of its salt-revenue. The present Bill appeared, at first sight, to be a small and somewhat insignificant one; but, in reality, it might be taken as one of the signs of a great and important change in the policy which had, for many years, been followed in regard to the levy of salt-duties in the North of India. That change of policy was initiated before Lord Lawrence left India, and had been vigorously followed up since the arrival of His Excellency the present Viceroy. The objects aimed at were so important that he proposed to state, for the information of the Council, what the main features of that policy were.

Quoting from a despatch which had been lately received from the Secretary of State for India, he (MR. STRACHEY) stated last week his belief that salt was in India a perfectly legitimate subject of taxation, but that, of course, it was necessary for the Government to take care that the duty did not bear oppressively on the poor, and that the best and really the only test for ascertaining whether oppression was avoided, was to observe the effect produced on the consumption of salt by the people. In the case of Madras and Bombay, MR. STRACHEY had endeavoured to show that there was reason to believe that the increase of duty would cause no diminution in the consumption of salt, while it would lead to an increase of revenue. But he was afraid that, in the case of Upper India, we could not say that our fiscal system in regard to salt could bear the test above described. There could be no doubt, he thought, that the result of that system in those parts of India had been such, that the people did not get anything like the quantity of salt which they required, and that they had to pay enormous prices for that insufficient supply. But in Northern India, the insufficiency in the supply of salt had been by no means solely or mainly the consequence of the taxation placed on that article. In Lower Bengal, the duty was four annas a maund higher than it was in the North-Western Provinces; still, although no doubt the price of salt in Lower Bengal was high, it could not be said that the people suffered by not getting a sufficient supply of salt, and the reason of the difference in this respect between Lower Bengal and Northern India was very simple. He believed that, thirty years ago, Bengal was in this respect no better off than the North-Western Provinces were now. It was only within the last thirty years that the people of Bengal had had it in their power to increase their consumption of salt to any very great extent. Sir John Peter Grant, when Lieutenant Governor of Bengal, said:—"The figures before 1837 show, not what quantity of salt the people wanted to eat, but what quantity of licit salt the Salt Board and the sub-monopolists chose to dole out to them at exorbitant prices."

But that had long ceased to be true. Practically, there was now a supply which might be called inexhaustible, derived from the salt-mines of Cheshire, which supplied by far the greater portion of the salt consumed in Bengal; and during the last thirty years the consumption of salt in Bengal had nearly doubled. There being no census, it was difficult to say with accuracy what the consumption of salt per head actually was in Bengal; but, as far as he could make out, there was reason to believe that it could hardly fall short of 12 lbs. per head per annum; and this, though not a very large supply and not as large as that consumed in Madras and Bombay, where the people were said to consume 14 to

16 lbs. per head, still, judging from experience in other countries and in other parts of India, it could not be said that a supply of 12 lbs. per head was insufficient. The North-Western Provinces, the Central Provinces, the Panjáb and Oudh were too far from the sea to be able to supply themselves largely with sea-borne salt.

There was, however, in Upper India really no natural want of salt, and if it were not for our fiscal system, salt would almost everywhere be cheap and abundant. The system which had for a very long time been in force in Upper India might be very easily described. He would read to the Council a short account that he had himself written about that system some years ago. He said :—

"Nearly the whole of the North-Western Provinces, and a large portion of the Central Provinces and of the Panjáb, are supplied with salt brought from the foreign States of Bhartpúr and Rájputána. This great tract of country is believed to contain between fifty and sixty millions of people" (since this was written, Mr. Hume had shown that the number was nearer seventy millions).

"We are told by the Customs authorities that the salt-sources in our own provinces are practically limitless in number. Mr. Vere, the Deputy Commissioner of Customs, who has long had charge of the Salt Department in the North-Western Provinces, says that salt of excellent quality can be made at a cheap rate in most of our districts. If it were not for our fiscal system, I suppose that there are few parts of India where salt would be cheaper and more plentiful. As matters now stand there is no part of India where salt is so dear, and where the consumption of the people is so small.

"The main features of that system may be stated in a few words. First, we absolutely prohibit the manufacture of salt throughout our territories. The result is that the enormous quantity of salt required for the consumption of fifty or sixty millions of people (seventy millions I now call it) has to be brought from places in foreign States. These places are at the northern extremity of the country to be supplied, and several hundred miles distant from the greater number of its markets. The most important of the salt-sources, the Sámbhar Lake, is nearly two hundred miles beyond our frontier. There are no roads that deserve the name between the places from which the salt is brought and our own territory; there are no other facilities for communication, and, in passing through the Native States, traders are subjected to vexatious hindrances and imposts. We have acted as if the object were to make the supply of salt as difficult and expensive as possible, and if this had been our object, we should have gained it most completely."

The result of this system had been, as he was reading the other day in a Newspaper article evidently written by some one who had access to the whole literature of the subject, that a ton of salt, of which the ordinary cost at the place of production was six or seven shillings, fetched, in the nearest British

markets, £14 or £15, about half of the cost being attributable to the customs-duties, and the greater part of the rest to the other causes to which he had already referred.

To enable us to collect these duties and to separate the Provinces where the higher duty of three rupees per maund was levied from the countries where salt was produced, or from the territories in which the lower rate of one rupee eight annas was levied, we maintained an inland customs-line which, with all its windings and ramifications, was more than 2,700 miles long, which required, to keep it up, some sixteen thousand men, and, including the charges of other preventive establishments, cost more than £200,000 a year. He had no doubt that the utmost care was taken to prevent abuses arising. The name of the able and energetic Customs Commissioner, Mr. Hume, was alone a sufficient guarantee that every precaution that could be taken was taken; still it was quite obvious that it was altogether impossible to avoid vexation and inconvenience to the people and to the interests of trade, so long as this internal customs-line continued. Owing to the obstructions caused by this system, MR. STRACHEY was quite satisfied that it was physically impossible to provide for Northern India anything like the quantity of salt really required. He did not mean to say that the supply was so scanty that it had in the smallest degree affected the health of the people. He was sure that there were no grounds for such an assertion. This had been very well shown by Mr. Hume. The conclusions he had stated were, MR. STRACHEY had no doubt, correct. Those conclusions were that, while a comparatively small quantity of salt sufficed to maintain human beings in perfect health, they would, if they could readily procure it, consume by preference a much larger quantity than was essential for that purpose; and that in no situation and among no class of the people was there reason to believe that our system had so affected consumption as to reduce it below the minimum required for the maintenance of health.

Consequently, the question was not really one of moral obligation, but one of fiscal policy. He thought it very important that there should be no misunderstanding on this point; otherwise he might seem to be drawing up a serious indictment against the Government. Although he certainly believed that the present system was a bad one, the objections were fiscal and economical, and not of a moral character. Our system was not really depriving the people of this necessary of life to an extent affecting their health, nor could it be even said that it seriously affected their comfort. Under these circumstances, we were under no obligation to make a sacrifice of revenue which could not be made without extreme inconvenience, and which would involve the imposition

of fresh burdens on other classes. The only thing necessary was to reform the system as rapidly as fiscal and other considerations would allow us to do.

As to the actual extent to which the existing system was checking the consumption of salt in the North-Western Provinces, it was not easy to give figures with much confidence; but he thought, as he said before, that we might assume from the experience both of other countries and other parts of India that, if the people had the means of obtaining an ample and cheap supply of salt, they would not consume less than 12 lbs. per head per annum. In Bengal, he believed that that was about the quantity which they consumed per head already. In Madras, the quantity amounted to 14 or 16 lbs. Mr. Hume, who had gone very carefully into the matter, had come to the conclusion that, in parts of India immediately outside our customs-line, the adult population certainly consumed 13 lbs. per head, and probably a good deal more. On the inside of the line, in the North-Western Provinces, the conclusion to which Mr. Hume arrived was that the average annual consumption amounted to 6¾ lbs. per head. MR. STRACHEY's own calculations had made it out to be something less than that; but, whatever might be the real amount, he thought there could be no doubt of this, that the people really did not consume half as much salt as they would consume if there were an abundant and cheap supply. Mr. Hume's conclusion was that, if the system were altered, we should have an increase of at least forty per cent. in the consumption; and his testimony was peculiarly valuable, for this reason, that for some time after he became Commissioner of Customs, he was disposed to believe that it was not the case that our system had checked the consumption of salt. For years past, it had been the common belief of the department that no objections of this sort could reasonably be made. The system having existed for a very long time, it was taken for granted that it was right; but when Mr. Hume had made careful enquiries for himself, he threw over the traditions of the department, and arrived at the conclusions which had just been stated to the Council.

MR. STRACHEY had now spoken only of the consumption of salt which had paid duty; but there was no doubt that there was a very large quantity of salt consumed in Upper India which had been smuggled into our territories, or had been illicitly manufactured. According to Mr. Hume's estimate, from the best information which he had been able to obtain, 8,58,000 maunds of salt which had not paid duty were consumed last year. This involved a loss of revenue of more than a quarter of a million sterling, and it was perfectly clear that, so long as the present enormous difference remained between the cost of production and the market-price of salt, there must always be a large amount of smuggling.

This system had certainly not been even financially successful. According to Mr. Hume, seventy millions of people in Upper India, where the duty was three rupees a maund, consumed, in the year, 49,00,000 maunds of salt, and paid a revenue of £1,470,000. In Madras and Bombay and other parts of Southern India, where the duty was, until the other day, one rupee and eight annas per maund, sixty millions of people consumed more than nine millions of maunds, or about double the quantity consumed by the larger population in Northern India, and paid a revenue of £1,410,000—a larger amount, taking into consideration the expense of the customs-line, than was paid in the other case. MR. STRACHEY believed that these figures rather understated than exaggerated the facts; but taking them as they were, they spoke volumes in condemnation of the existing system in Upper India. If the consumption of salt in Upper India were only to rise to the rate already reached in Madras, or, say, 15 lbs. per head—and no one would say that was not a perfectly reasonable and moderate supposition—and if we levied a duty of one rupee and thirteen annas a maund—the duty now levied in Madras and Bombay—we should get a salt-revenue of £ 2,378,000, or almost a million more than what we now obtained from salt in the Provinces of Northern India.

Under circumstances such as those which he had endeavoured to describe, it was perfectly clear, he thought, that no more reduction of duty, uncombined with other measures, could give any real or sufficient relief to the people. The fact was, that there was now a physical impossibility, owing to the circumstances he had stated, in bringing into the country a sufficient supply of salt. By our system, as he had said on other occasions, we had created a sort of artificial salt-famine which no mere reduction of price could adequately relieve. The means of transport necessary for bringing into Northern India double the quantity of salt which was now consumed certainly had no existence, and this could not be provided without a radical change of system. Anybody might calculate this for himself, and if he would reckon up the number of carts and cattle and camels that would be required to bring this enormous quantity of salt required for the consumption of seventy millions of people, he would easily convince himself that what MR. STRACHEY had said was true.

The measures which were first required were measures which would make it possible to bring into the market a much larger quantity of salt. Until that was done, there would be little advantage in reducing the duties. We should lose revenue, and the people would get little more salt than they got now. Consequently, the Government was of opinion that there was no actual necessity for making any reduction in the salt-duties on this side of India; and, indeed, financial reasons rendered this at present quite impracticable.

The present Bill was one of the results of the determination of the Government, arrived at before Lord Lawrence left India and steadily acted upon since, to increase the facilities of obtaining an abundant supply of salt. In Oudh and in parts of the North-Western Provinces, there were great natural facilities for the production of salt. In Oudh, before it became a British Province, the production of salt was extremely large. In one place, within a very small area, there were brine-wells, which were said to have produced annually 4,00,000 maunds, at a cost of a few annas per maund, and in Jaunpúr, in the North-Western Provinces, facilities for the production of salt were said to be still greater. The Government believed that, by allowing the manufacture of salt under an excise system, in carefully selected places and in places distant from the Rájputána frontier, we should gain a sensible addition to the quantity of salt produced, without any risk to our revenue. But no doubt caution would be necessary in carrying out this plan. It was only where great facilities existed both for the manufacture of salt and for supervising the manufacture that we could venture to try the experiment; but to allow any general manufacture of salt would, for obvious fiscal reasons, be quite out of the question. The existing law gave no power to the Government to regulate the local manufacture of salt, and the present Bill was intended to remedy this defect.

Mr. Strachey thought that he might fittingly take this opportunity of describing, for the information of the Council, the other measures which were in active progress for increasing the supply of salt in Northern India. He referred last week to the treaty which had been entered into between the British Government and His Highness the Mahárájá of Jaypúr with the view of obtaining the full advantage of the great supplies of salt in the Sámbhar lake. This lake was one of the main sources of supply of Northern India, and an excellent account had been given of it from personal observation by Mr. Hume. He described the lake as being a shallow sheet of water extending in the height of the rains to about eighteen miles in length, and from three to ten miles in breadth. It was distant about thirty-six miles from Jaypúr, and about two hundred miles from Delhi. The whole of the eastern shore of the lake and a part of the southern portion belonged to the Jaypúr and Joudhpúr States jointly; the rest belonged exclusively to Joudhpúr. Salt was made in several different ways, but in all the manufacture depended on solar evaporation. The process was extremely simple, and the cost of producing a maund of salt was under three annas. The quantity of salt was, it might be said, for all practical purposes unlimited. Mr. Hume found from a number of observations that, on the average, each cubic foot of water contained eight pounds of

pure salt, and of the mud which formed the bottom of the lake, one-fifth part was also pure salt; and he came to the conclusion that, assuming the annual consumption at the largest possible amount at which we could ever expect to arrive, there were supplies at the Sámbhar lake which would certainly last for the next four hundred and fifty years.

MR. STRACHEY thought that it would be obvious to every one, that it was most important that we should obtain, for the people of Northern India, the full advantage of this practically inexhaustible supply of pure salt. To enable us to do this, two things were necessary. First, railway communication; but the mere construction of railways would not be sufficient, for the fact must be remembered that the States of Jáypúr and Joudhpúr, and especially Jaypúr, had command of this the most important of all the sources of our salt-supply, and the future traffic in salt would be, to a very great extent, dependent on the action taken by those States. Consequently, it was evidently desirable to remove all danger of future complications and difficulties that might arise, and to render it certain that the great resources of the Sámbhar lake would be available to the utmost possible extent. Fortunately, the Government had to deal in this matter with one of the most enlightened of our Indian Princes—one who, by his numerous reforms in his own country, had shown very clearly that he thoroughly understood the measures that it was right to adopt for the benefit of his people and of his Government. His Highness the Mahárájá of Jaypúr at once expressed his complete willingness to enter into negotiations with the British Government on this subject, and there was found no difficulty in coming to an arrangement with His Highness on this subject. The result was that a treaty was drawn up, under which His Highness had leased to the British Government a complete control over the manufacture and sale of salt in the Sámbhar lake. Similar negotiations had been going on with His Highness the Mahárájá of Joudhpúr, and we had learned by telegraph that they had been brought to a successful termination; but we had not yet heard any details of what had been done, and, therefore, MR. STRACHEY could only refer generally to the matter. We might, however, confidently hope that arrangements had been made which would enable our own people to have the full advantage of the salt-supply of the Sámbhar lake, and MR. STRACHEY was sure that the arrangements were not at all one-sided, and that they would be found to be really as advantageous to the States of Jaypúr and Joudhpúr as to us. He was satisfied that, if no such arrangements had been made, it would have been very unlikely that those States would ever have derived from the Sámbhar lake so large a revenue as they would probably derive when the arrangements entered into with the British Government should have come into full operation.

The railway which was to connect the Sámbhar lake with our own provinces was already in progress. As far as Rewári, about fifty miles from Delhi, the survey had been made and the line completely settled. Orders for commencing the works had been given, and there was no doubt that, within the next month or two, they would be actually begun. On that line, about thirty miles from Delhi, there was one of the most important salt-sources in Northern India—the brine-wells of Sultánpúr; they were in our own territory and capable of immense development. Mr. Hume believed that we might expect to get from them, without any difficulty, not less than 50,000 tons a year. MR. STRACHEY thought that we might reasonably hope that, within the close of next year, railway communication could be completed between the salt-works at Sultánpúr and Delhi. The engineers were also making surveys, both on the line from Agra to Jaypúr, which would open up all the great salt-supplies of Bhartpúr, and also on the section from Rewári to Jaypúr. The first object would be to obtain direct communication between Sámbhar and Delhi. The railway bridge at Delhi would give the means of communication with the whole railway-system of Northern India, and the salt-wagons from Sámbhar and Sultánpúr would be able to go straight to their destination. A further great stimulus to the production of salt would be given by the railway communication which would soon be opened out with the districts of Rohilkhand, which furnished a large portion of the main staples of the return trade to Rájputána. The most important of these were rice and sugar. Every means which would facilitate the export of our own commodities would also facilitate the import of salt from Rájputána into our own territories. A railway had been already commenced from Alígarh to Chandowsi, and thence to Murádabád, Bareilly and Sháhjíhánpúr. It was difficult to say how long it would take before the whole of these railways were finished, but MR. STRACHEY would hope that, with the exception of some great bridges, the whole of the lines of which he had been speaking would be finished within the next two years.

There was one other most important source of supply of salt in Northern India, *viz.*, the salt-mines in the salt-range in the Panjáb. These no doubt were capable of immense development. The main source of this supply was near Pinddádan Khán, which was about forty miles from the main line of the proposed Lahore and Pesháwar railway. Consequently, the Government contemplated making a branch from the salt-mines, to connect them with the main line. Orders had been already given for making the survey and estimates for this line, and it was hoped that, in the course of the present season, the Government would be in a position to come to a final conclusion about it. If present anticipations should be realized, it seemed reasonable to hope that, excepting the great bridges

across the Panjáb rivers, there might be, in the course of the next year or so, direct railway communication between the salt-mines and the railway-systems of Upper India. Nor must MR. STRACHEY forget, in speaking of the means of communication which would exist in the future, to mention the canals which were in progress. No doubt they would not come into full operation for a considerable time to come; but, before many years expired, it was not too much to say that there would be direct means of water-communication between almost all parts of the Panjáb, Oudh and the North-Western Provinces. When all these measures to which he had referred were in full operation, when the local manufacture of salt was properly developed, and when our railway communication to the inexhaustible sources of supply in Rájputána and the Panjáb were open, he thought that the problem now before the Government would find its solution. It would then become possible for the people of Upper India to obtain all the salt which they required, and a great increase in their consumption would then, for the first time, become practicable. No doubt a long time must elapse before we could hope to carry out an equalisation of the salt-duties throughout India, or to get rid of the inland Customs-line; but the measures which he had now been describing would be an essential and a most important step towards the fulfilment of that great object—an object which he thought the Government ought in future steadily to hold in view as one which it hoped ultimately to attain.

The Hon'ble SIR RICHARD TEMPLE said that, though he had nothing new to add regarding the proposed legalization of the manufacture of alimentary salt in Northern and Central India, yet he hardly liked to give a silent vote on this occasion, having necessarily been much concerned in the general supervision of the Customs Department.

While admitting the defects in the present system, as pointed out by the Hon'ble Mr. Strachey, SIR R. TEMPLE yet thought that this Council would do well to remember that, originally, there were many good reasons for the establishment of that system in the North-Western Provinces many years ago. He believed the main reasons to have been somewhat as follows:—It was believed that the North-West Provinces were not, on the whole, well suited for the production of salt locally; that, at least, they were inferior in this respect to several adjoining Provinces, such as Rájputána or the Panjáb. Some districts of the North-West might yield tolerably good salt; others little or none. But in none would the salt be of first-rate quality. Thus the prohibition of local manufacture was not thought to be a real grievance. Then the belief doubtless was that Rájputána was the natural and the best source of supply of salt for the North-Western

Provinces. This salt was much superior to any that could be produced in those Provinces. However much the provincial manufacture might be encouraged, the foreign Rájputána salt would be sure to enter into competition. That being so, a Customs-line must be kept up on account of Rájputána, unless the foreign salt was to be allowed to enter untaxed, in which case the taxation on home-made salt must be relaxed, and, indeed, the salt-revenue be given up altogether. Then, if the Customs-line were maintained for the foreign salt, and supervision on home manufacture were also maintained, there would be double establishments, and double trouble in every way. Thus it were better to prohibit internal manufacture altogether, and concentrate effort on the external Customs-line, to the great simplification of system. There would be but one line of supervision along the frontier, and there would be no material interference or inquisition in the interior of the country.

These and many other reasons weighed in favour of the present system, which was in former days considered a fiscal measure in every way simple and effective. It had been successfully administered for many years by highly qualified officers, many of whom had deserved well of the country. The revenue had flourished; and, as Mr. Strachey had to-day admitted, the people were not really injured, and were, for the most part, saved from supervision within the outside line.

But while urging this much (though indeed much more might be urged) in justice to what had been done by those who preceded us, SIR R. TEMPLE inclined to acknowledge that, in certain respects, the system had hardly fulfilled all the expectations which doubtless were formed of it originally; and that various circumstances were developing themselves which warned us imperatively to prepare for change.

In the first place, experience, lasting now for a long time, and having its teachings carefully noted, shewed us that the North-West population had never yet consumed so much salt per head as they might consume beneficially, and as we should like to see them consume, both for their own sakes, and for the interest of our revenue. Careful enquiry had now established that the consumption was perceptibly greater beyond our frontier-line than within it. Analysis of the statistics of consumption in Eastern and Southern India, also, perhaps, in North-Western India, shewed that many sections of our population consumed much more salt proportionally than the people in the North-West. All this pointed to the conclusion that the North-West consumption was checked by the fiscal system.

In the second place, long after the Customs-cordon was fixed, the Province of Oudh, on its annexation, fell within the operation of the system and of the prohibition against local manufacture. Now, the best authorities in Oudh seemed to be clear that salt could be advantageously manufactured there, and that the people must be allowed full trial of that plan. If such trial were conceded to Oudh, it seemed impossible to withold similar concession from the North-West.

Thirdly, one main element in the case always had been the transit of salt from Rájputána to the North-West. Now this transit, always troublesome and expensive, had grown, and was still growing, worse and worse. The cost was much affected by the general rise of prices. Hence, any difficulty which there might have originally been in respect to a full and easy supply of salt from Rájputána was grievously aggravated. This trouble might last some few years perhaps, but would be fully removed as soon as the new arrangements in the Jaypúr territory (under the auspices of our Hon'ble colleague the Mahárájá of Jaypúr) should come into play for the collection of our salt-revenue on the spot and close to the place of production; and as soon as the railway through Rájputána was completed. And this constituted, to his (SIR R. TEMPLE'S) mind, a fourth reason for preparing for change. For, the day that the Jaypúr arrangements and the Rájputána railway were completed, the maintenance of the present Salt Customs-line would be out of the question.

But, further, in the fifth place, unless we cheapened the salt now supplied in the North-West, those Provinces would be gradually supplied at the one end from the Panjáb, at the other end from Bengal. From both directions railways were fast facilitating the transit of salt into the North-West. If the North were to be more largely supplied than at present from Bengal and the Panjáb, that might be a good result. But in that case, what would become of the fiscal result of the Customs frontier-line? and how could it then be worth our while to keep that line up? If, then, the North-West salt must be cheapened, one mode of compassing that was to try local manufacture.

Then, in the sixth place, while reductions of our establishments were generally so desirable, we could not forget that the strength of the establishments, preventive and other, employed on the Customs-line, was really great, helping to swell our estimate, and amounting to an appreciable percentage on the revenue collected. It was financially desirable to reduce these establishments, however much we might regret to part with an organization sustained for so many years by so many able revenue officers, and distinguished by so much zeal and devotion in the fiscal interests of the State. It might be that such reduction

would not be effected for years: but we could not too soon begin to prepare for the change which must arrive.

Lastly, SIR R. TEMPLE understood his hon'ble friend (Mr. Strachey) to say that there was no real use in reducing the rate of Customs-duties on salt. He should himself hold a different opinion. As this Council probably knew, he proposed a reduction in the existing rate of duty, which was clearly too high: and this he did with the full approval and support of the then Governor General (Lord Lawrence). He would still desire to reduce it if possible. But financial considerations unfortunately rendered this impossible. And this furnished one more cogent reason for trying the effect of legalizing local manufacture under due restriction. If we could not afford to give the people the benefit of reduced duties, we were the more bound to adopt any other available means of relieving them from difficulty in the supply of salt.

Thus it was that, while he believed that the existing system was founded on reasons then good and valid, and had still something to be said in its recommendation, he still thought that, in accordance with the changing circumstances around it, that system now required some re-consideration and amendment, and he was therefore willing to vote for the present Bill.

HIS HIGHNESS THE MAHÁRÁJÁ OF JAYPÚR said, that he had carefully considered the Bill, and he fully admitted the benefit of its theory, both to Government and the people. But, practically, it occurred to him that, if salt was to be manufactured in too many places, the preventive service that would necessarily be required for its protection would cause an enormous amount of difficulty, and he would therefore suggest that the operation of this Bill be confined to such places only where all those difficulties could be easily obviated.

Whilst making his remarks on this Bill, he must, with His Excellency's permission, express his thanks to his hon'ble colleague, Mr. Strachey, for the very flattering mention of his name made by him in connection with the Sámbhar Lake. It had been a matter of deep regret to HIS HIGHNESS that the salt produced in his territory, although the best of its kind, was not so generally used by the public as he wished it to be. But now, as His Excellency's Government had got the lease of the lake from his hands—an arrangement which he trusted would prove advantageous both to His Excellency's Government and the Jaypúr Durbar—he confidently hoped that the Sámbhar salt

would now be brought to a more extensive and general use, and the people would get the benefit of a good article at a cheap price.

Major General the Hon'ble SIR HENRY DURAND said that the financial aspect of the question had been so fully gone into already that there was no necessity for his making any remarks on that phase of the question. But there was one point on which he would ask to be allowed to say a few words, namely, the gratification it afforded him to find Native Princes in the position of the Mahárájá of Jaypúr so cordially combining with the Government of India in measures equally beneficial to their own and to Her Majesty's subjects. He thought it a matter of hearty congratulation to see His Highness the Mahárájá of Jaypúr coming forward in so liberal and so wise a manner. We had had as yet but few instances of such co-operation. We had one in the case of the Mahárájá of Pattiala with respect to a canal from the Sutlej. We had had a few others. But SIR HENRY DURAND thought that the example before them would greatly facilitate and encourage others to come forward and associate themselves with the British Government in acts so generally beneficial.

All that fell from the Hon'ble Mr. Strachey and the Hon'ble Sir Richard Temple went to prove how slow the action of our Government had been with reference to what was of immense importance in its bearing on the supply to the millions of India of the prime necessities of life. SIR HENRY DURAND said this without any intention of reflecting on the Government, because it had to contend against difficulties which, to a very great degree, required the capital of England to enable it to surmount. But when he looked to the number of miles of railway constructed in America, some 42,000 miles to our 5,000, when he found that there, since the close of the civil war, they had been going on constructing and opening railways at the rate of upwards of two thousand miles a year—that was to say, when he found that the United States opened, in the course of one year, ten times the number of miles of railway that we did, whilst their population numbered only thirty-five or forty millions, to ours of two hundred millions—he was struck with the enormous difference between the progress made by the United States and the progress we were making. He did not think these remarks out of place with reference to considerations affecting the measure before the Council. Although the comparison might not be strictly relevant to the Bill, and he might not be quite in order according to the rules of the Council, yet he thought it was pertinent to the matter in hand, and showed how necessary it was to increase railway communication more rapidily than we had as yet done, and that the measures taken by His Excellency with a view of securing

a more economical and expeditious construction of railways were of incalculable importance.

The Motion was put and agreed to.

COURT FEES' BILL.

The Hon'ble MR. COCKERELL introduced the Bill to provide for the better regulation of Court fees, and moved that it be referred to a Select Committee with instructions to report in three weeks. He said the primary object of this Bill was to grant a substantial measure of relief to the general litigation of the country, which was believed to have been unduly checked by the operation of the rates of Court fees introduced by the legislation of 1867. It further purported to effect a consolidation of the entire law relating to the special taxation imposed to meet the cost of the administration of justice; and it provided also for the enhancement of the duties heretofore levied on probates of the wills, and letters and certificates of administration of the estates, of deceased persons.

In regard to the working of Act XXVI of 1867 he need say little now. When he asked leave to introduce this Bill, he stated in some detail the results obtained from a special investigation of the effects of that enactment, and he showed that, whereas previously there had been a steady progressive increase of litigation, its introduction had been followed by a considerable falling off in the number of suits.

The High Court of the North-Western Provinces emphatically, and the High Courts of Madras and Bombay in a greater or less degree, condemned the rates fixed by that Act as entailing a greater charge upon the administration of justice than the litigation of the country could reasonably bear. And at the very time that these proposed reductions of Court fees were announced at Simla, the Judges of the High Court in Calcutta were recording their conviction, in their annual Report on the Administration of Justice for the year 1868, that the continued excessive falling off in the litigation of Bengal proper was due entirely to the too heavy charges imposed by the existing law.

The present measure, therefore, was justified alike by the statistical returns and the unanimous opinion of those most competent to take a correct view of the question in regard to the effect of the law as it now stood.

It was unnecessary also for him on the present occasion to describe the details of the proposed reductions of the rates fixed by Act XXVI of 1867,

for those details had been already explained in the statement which he made when this subject was last before the Council. The Bill would be found to contain the reductions of rates and other alterations then proposed. He would merely now remind the Council that, as compared with the existing law, in regard to the overwhelming majority of suits, *i. e.*, suits in which the value of the property litigated did not exceed Rs. 1,000—and that the Council might understand what was here meant by an overwhelming majority, he might state that, out of an aggregate number of upwards of 7,03,000 suits instituted annually throughout this country, less than 10,000 involved an amount or value exceeding rupees one thousand—the Bill contemplated a reduction of the fee paid on the institution of the suit from ten per cent. (the present rate) to seven and a half per cent. of the amount sued for, or in other words, the remission of one-fourth of the present fee. In respect of suits in which the amount or value involved exceeded rupees one thousand, the reduction was proportionately less. The maximum fee leviable in any case was rupees five thousand, in lieu of the present unlimited rates, which acted as an absolute prohibition to the institution of suits of very large amount. In regard to suits of amount or value below ten rupees, the proposed rates were considerably less than those obtaining under any former law.

The financial outturn of fees leviable in this last class of suits was inconsiderable, and the contemplated reduction was calculated to afford appreciable relief to the poorer class of suitors, who most needed it, without any material loss of revenue.

The aim of the proposed scale of fees was to equalize, as far as possible, the incidence of the taxation on suits of different amount or value. The rates now obtaining threw an undue proportion of the burden on suitors for property of which the amount or value did not exceed rupees one thousand; hence the Bill was designed to effect the largest reductions in respect of suits of this class.

Viewed in comparison with the scale of rates which obtained under the former law on this subject, Act X of 1862, the rates contained in the Bill would be found to represent nearly the same mean percentage of institution-fee on the amount litigated, in the case of suits of amount or value not exceeding rupees one thousand, as the rates of the former enactment. But the scale of Act X of 1862 was defective both as regarded the extreme inequality of the incidence of the taxation imposed by it and its financial results: for example, on the institution of a suit for Rs. 310, and one for Rs. 800, the same fee, namely, Rs. 32, was levied. On a suit for Rs. 810, the institution-fee was Rs. 50; so that the person whose *bonâ fide* claim amounted to Rs. 810 found his

interest in suing for Rs. 800 only, and the revenue was thus mulcted of a considerable portion of its legitimate income. Instances of this kind, exhibiting the defective working of the irregular ascents which marked the scale of fees chargeable under the former law, could be multiplied.

The proposed scale, whilst it maintained the general average of the rates of Act X of 1862 in regard to suits of amount or value not exceeding rupees one thousand, comprised a system of gradual ascents which operated to equalize the incidence of the charge on suitors for different amounts, and to secure a larger income to the revenue.

The reduction of the fee on certain criminal petitions from one rupee to eight annas was proposed as a compromise between the extreme conflicting opinions which prevailed as to the policy of the existing law in this matter. As was well known to the Council, there was a strong feeling on the western side of India and in many parts of the Madras Presidency in favour of the abolition of all charge on the institution and investigation of petty criminal complaints, whilst, in the Bengal Presidency, the general opinion was that the impost supplied a wholesome check on the institution of complaints and prosecutions in the criminal courts on the most trivial and vexatious grounds, and could not, in the interests of the general community, be safely dispensed with.

There was one point in connection with this question which he thought had been to a great extent lost sight of by those who advocated the abolition of the charge, namely, that whereas, formerly, the complainant had to pay for the service of the subpœna on his witnesses and the summons on the defendant, these processes were, since the passing of the Criminal Procedure Code, served through the Police without charge to the petitioner. It was probable, having regard to the fees which had been levied under the former procedure for the service of processes, that in the majority of cases, even under the present law, the complainant in petty criminal cases was subjected to less expense in the prosecution of his case than he had been before the introduction of the Code of Criminal Procedure. He knew that the extent to which the agency of the Police was engaged in the service of these processes, and the police-force was on that account detached from its more important duties had, in the Lower Provinces of Bengal, attracted the serious attention of the Local Government; and it had been proposed to revert to the system of levying process-fees to meet the cost of supplying an independent agency for their service, and relieving the Police of a duty foreign to the purpose for which that force was established. He thought that this consideration alone pointed

to the conclusion that the Bill went quite far enough in that direction, and that the abandonment of all fees on the institution of such cases was impracticable.

So much of the Bill as embraced merely the consolidation, by transfer of portions of other enactments, of the existing law relating to the levy of fees in judicial proceedings called for but few remarks. Advantage had been taken of this opportunity so to re-arrange and express the provisions of the law on this subject, without any material alteration of the substance of such provisions, as to make them generally clearer and more intelligible. With this object much that appeared in the form of explanatory notes attached to the schedule in Act XXVI of 1867 had been placed in the body of the Bill, and the whole arrangement of chapters and sections was shaped on the plan of the General Stamp Act.

The High Court Fees' Act (No. XV of 1868) and Act XVIII of 1865, an enactment conferring on the Governor General certain powers of abatement of stamp-duties, had been wholly incorporated, with the amendments of Act XXVI of 1867, in the present Bill. The only material alteration proposed in the provisions of the former of those Acts was that the levy of fees by means of stamps should at once come into operation, instead of the time for the introduction of that measure being left to the determination of the Local Governments.

The advantages of levying these fees by means of stamps were now universally acknowledged.

The High Court Fees' Act for effecting this object was passed about a year and a half ago. In Calcutta, both in the High Court and Court of Small Causes, the payment of fees by means of stamps had been for some time past in force; there had been ample time for the needful preliminary arrangements in Madras and Bombay, and it was desirable that the uniform adoption of the measure should be no longer delayed.

There was one provision of the existing law, Act XXVI of 1867, which was omitted from the Bill. The cause of its omission was mentioned in the Statement of Objects and Reasons which was published in conjunction with the Bill, and to which he should not have attached sufficient importance to make any remarks in regard to it on the present occasion, but that he had learnt that the omission had been specially noticed and was thought to require explanation. He referred to the provision which appeared in the Act just cited, under the head of exemptions, and was to the effect that "No advocate of any High Court shall be required to file or present a mukhtárnáma or vakálatnáma or any other

document empowering him to act." Now, he could only account for such a provision finding place in an enactment for regulating the payment of Court fees, by the supposition that all that was intended was the exemption of advocates from the obligation to present any *stamped* vakálatnáma or pay any fee for their license to appear as counsel before the Court.

The question as to whether an advocate should appear before any Court without presenting any written authority, was obviously for the Court's consideration, and to be determined by the rules of practice laid down by the superior Court in such matters. It certainly did not properly come within the scope of such a measure as the Bill now before the Council.

Moreover, the retention of the provision referred to in its present shape was objectionable, as it was in direct conflict with the rule laid down in section 18 of the Civil Procedure Code. So long as the advocate confined himself to the duties of counsel, he might reasonably claim the privilege of appearing before a Court without producing any written authority, as consonant with the practice of the English Courts; but if he assumed the functions of a pleader, which embraced the duties of counsel and attorney combined, he could see no reason for his claiming a privilege, merely on the ground of his being an enrolled advocate of the High Court, which was not accorded to the Native pleader.

The Bill contained a provision for a uniform charge for the service of processes issued by the Civil and Revenue Courts; heretofore there was no uniformity of practice in regard to such charges. The system had varied in each Presidency and in almost every Province.

Previous to 1863, the law provided for the levy of a certain daily rate, and it was left to the Court issuing the process to fix the number of days required for its service.

The fees were paid to the Názir or Sheriff's officer attached to each Court, by whom one-fourth of the gross amount levied was appropriated as commission—there was no fixed salary attached to his office—and the remaining three-fourths were divided amongst the establishment of peons which he was required to maintain for the service of processes. Under this system, little or no control was exercised by the Courts, and there were no means of ascertaining the actual legitimate cost of serving processes.

By Act XI of 1863, which directly applied to the North-Western Provinces, and might be extended to the Panjáb and to any of the Provinces under the immediate administration of the Governor General in Council,

power had been given to the Courts, subject to the control of the Local Government, to regulate the charges for the service of processes, and the mode of levying such charges; and it was provided, further, that the money paid for the service or execution of processes should be credited to the Government, and formed into a fund out of which the salaries of the peons employed in serving the processes were to be paid. In the same year, an Act containing similar provisions was passed by the Council of the Lieutenant Governor of Bengal and came into operation in that Province.

Thereafter, throughout the Bengal Presidency, the appropriation of the process-fees by the Názirs and their peons was discontinued, and a fixed establishment of peons, to whom regular salaries were paid, was organized in lieu of the former agency. The whole process-serving system was thus brought under control, and the charges fixed more in accordance with the actual cost of the service than obtained under the former practice.

In the Lower Provinces of Bengal a fixed scale of fees, initiated by the Board of Revenue in regard to processes issuing from the Revenue Courts, was about two years ago introduced into the Civil Courts of Lower Bengal by an order of the High Court, and has been in operation up to the present time.

That scale provided a fixed charge of one rupee leviable on each process to be served at a greater distance than twelve miles from the Court from which it issued, and a fee of eight annas on processes to be served or executed at a less distance. This system was found to yield a surplus after defraying all costs of service.

From the returns which he had obtained of the working of the system in the Revenue Courts, in which it had had the advantage of the most careful supervision by the local Board of Revenue, the actual cost of the service of each process under an economical administration of the serving agency had been ascertained, and upon this basis the experimental rates contemplated by the Bill had been determined. A certain margin of excess of probable income over expenditure had been allowed, to cover unforeseen contingencies, and it was thought that the proposed rates would be sufficient to meet the expenditure incurred in the service, and at the same time leave no material surplus. For the Government had no desire to exact from the suitor, on this account, more than was needful under an efficient administration of the process-serving department to meet its actual cost.

The scale of fees leviable on the probate of wills and the grants of letters of administration under the Indian Succession Act, and of certificates for the

collection of debts on succession under Act XXVII of 1860, as provided by the Bill, would be found to approximate the English rates chargeable on like instruments. Generally, the rates contained in the Bill were somewhat lower than those which obtained in England, but they were fixed on the same principle. This enhancement of the existing duties was rendered necessary as a set-off against the considerable loss of revenue which was anticipated as the result of the reductions of fees levied on suits.

It had been objected to on the ground of the assumed partiality of the taxation imposed by it; it was argued that a tax on wills and letters of administration would fall chiefly, if not wholly, on Europeans. But it must be remembered that we were on the eve of an extension of the testamentary provisions of the Indian Succession Act to Hindús and Buddhists at the Presidency towns, and, as the practice of testation was largely on the increase in many parts of the country, the further extension of those provisions was probably not distant.

MR. COCKERELL came now to the question of the expected financial results of this measure. They could not be anticipated with absolute accuracy, for, although the primary loss occasioned by the remission of one-fourth of the tax now levied on the mass of the litigation of the country had been readily ascertained, it was impossible to gauge with any precision the extent to which the litigation repressed by the prevailing rates would revive under the proposed reductions. This could be but roughly estimated. Some considerable compensation in this direction, however, was not unreasonably to be looked for; and measuring the expected increase by the extent of the decrease which was believed to have resulted from the enhanced rates of fees obtaining under the existing law, he arrived at the conclusion that the nett loss to be anticipated from the proposed amendments in the existing charges on the administration of justice would not exceed Rs. 8,00,000. The estimated increase of revenue to be derived from the enhancement of the duties on probates and letters and certificates of administration was about Rs. 3,00,000. Deducting this amount from the anticipated deficiency of revenue just stated, the nett cost to the State, of the adoption of the provisions of the Bill as they now stood, was about Rs. 5,00,000.

In conclusion, he would advert to what he stated when he first brought the subject of this Bill before the Council, that any delay in the progress of a measure of this kind towards its final adoption would gravely disturb the course of the general litigation of the country, and was on that account greatly to be deprecated. Suitors who saw their advantage in

waiting for the passing of this Bill, would, wherever the circumstances of the case admitted of it, withhold the institution of their projected suits; not only would the whole business of the Courts be thereby seriously deranged, but the estimates of the outturn of this branch of the revenue would, in all probability, be disappointed to a much greater extent than they would be by the proposed reductions of the existing rates being immediately carried into effect.

He repeated therefore the expression of the trust that this Bill would become law before the close of the current year.

He saw no difficulty in the achievement of this object. The Bill was published nearly two months ago, and there had been ample time for the communication of opinions in regard to the changes contemplated by it.

He had therefore moved that the Bill, with the report of the Select Committee thereon, be returnable to the Council in three weeks.

The motion was put and agreed to.

INCOME TAX ACT.

The Hon'ble SIR RICHARD TEMPLE presented the report of the Select Committee on the Bill to enhance the duties leviable under the Indian Income Tax Act. He said, that he need only, on this occasion, advert most briefly to the main sections of the Bill. In the Statement of Objects and Reasons put forth in October last, it was stated that "the present Bill proposes to increase the rate of Income Tax for the second six months of the current financial year."

Now, the Bill, as revised by the Select Committee, gave precise legal effect to that intention. To this end it was necessary to frame separate sections for the duty on the several sources of income; namely, that on official salaries, that on profits of Companies, and that on all other income affected by the Act.

Section 2 prescribed that, for official salaries, two-and-a-half per cent. should be levied for the period commencing from the first of December, that was, for one-third of the year. This was meant to be equivalent to the two per cent. for the last six months of the year, so that the official classes might, *quoad* the incidence of the tax, be treated in the same way as the non-official classes. Section 4 prescribed that, on Companies which paid the tax in one sum for the

year, there should be levied an additional half per cent. on the whole as equivalent to the one per cent. on the half. And section 5 prescribed that, on all other income on which the assessment was paid either quarterly or half-yearly, there should be levied an additional moiety.

With these remarks, SIR RICHARD TEMPLE presented the report of the Select Committee.

The Hon'ble SIR RICHARD TEMPLE having applied to his Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble SIR RICHARD TEMPLE then moved that the report be taken into consideration.

HIS HIGHNESS THE MAHÁRÁJÁ OF JAYPÚR, speaking in Urdu, said that, in offering his remarks on the Bill to enhance the duties leviable under the Indian Income Tax Act, he should, with His Excellency's permission, dwell upon two points only,—*first*, the necessity for the increased taxation; and *secondly*, the fitness of the tax proposed to be enhanced. In his opinion, of all modes of direct taxation, the Income Tax was the most ill-suited to this country, as it was most opposed to the feelings of the people. The Natives looked upon it as a very odious tax, and they would feel it the more bitterly when the rate of assessment should have been doubled, although for a short period, as contemplated by the present Bill. But, however he might deplore this state of things, and howsoever distasteful the tax might prove to the people, the exigencies of the State must outweigh all other considerations, especially in the case of a deficit in the State Exchequer, which was always a more direful calamity than the introduction of a fresh or an increased tax. The state of the Indian finances, he was fully convinced, was susceptible of great improvement, and he durst say that the system of retrenchment so vigorously pursued and the facilities afforded to trade under His Excellency's administration would soon enable his Government to bring the income and the expenditure of the empire to an equal balance, and falsify the opinion expressed in certain quarters that the deficit in the Indian finances was a chronic one. From all that had fallen from the lips of his Hon'ble colleagues, Sir Richard Temple and Mr. Strachey, on the introduction of this Bill, great hopes were entertained of a speedy restoration of the finances of the empire to a healthy condition, and he confidently believed that when that time should come—may Heaven speed that day—His Excellency would be the first and foremost to propose the abolition of the Income Tax.

With these remarks, he would vote for the passing of the Bill, and support his Hon'ble colleague, Sir Richard Temple, in the amendment to be proposed by him.

Major-General the Hon'ble SIR HENRY DURAND said, that His Highness the Mahárájá of Jaypúr had, in some respect, rather anticipated part of what he was going to say. When the Hon'ble Sir Richard Temple introduced this Bill, SIR HENRY DURAND intimated his intention to support it. He had no purpose of departing from that intention: at the same time, he might state, as his own views were very well known, both by His Excellency the President and others, in respect of the Income Tax, the reasons which influenced his vote. He agreed with the Mahárájá of Jaypúr that it was a tax that was unsuited to the people, and, as hitherto worked, it had not been a successful tax: for that reason, he was originally averse to the tax. He also considered it a war tax, and that it should be kept in reserve for circumstances of an exceptional character, which would render it necessary to supplement the revenues of the empire in an exceptional manner. But he was reconciled to the imposition of the tax in the present instance, by the fact that our financiers seemed unable to suggest any other mode by which to touch the classes who had really benefited more from our rule than any other class. He did not look on this Bill as indicating that an Income Tax would be a permanent measure. As time progressed and the revenues of the empire improved, the Council should be able to do away with a tax which had been designated, and he believed justly designated, by the Mahárájá, as odious to the people. At the same time, he saw great difficulty in reaching the classes to which he had alluded. There was, it was true, perfect simplicity under the Income Tax with reference to the taxation, under its provisions, of all official classes and even of European mercantile classes in our great centres of commerce—he meant the towns of Calcutta, Madras and Bombay: it was perfectly easy, for instance, for an official person like himself, when the notice of the Collector was served upon him, to reply to it with a statement of his taxable means, and we knew that the return from the servants of the Government would be correct. We knew also that the patriotism of British merchants made them quite ready to say what was due from them. He wished he could say that he was satisfied that it was equally simple and easy, over the length and breadth of the land, to make sure of similar correctness of returns. He held the tax, therefore, with the exceptions stated, to be one of great difficulty in carrying out; and if it were not for the peculiar circumstances to which he had alluded, and for the existence of the permanent settlements of land in some provinces, he could not have agreed to the imposition of an Income Tax. But

so long as our permanent settlements were in force, he felt the necessity for some such measure as this, in the absence of any better being suggested, in order that classes which profited most under our Government should contribute to its urgent necessities.

But apart from that consideration, SIR HENRY DURAND must advert to other points which he thought material to the hope which he entertained that this might not be a permanent measure with reference to the future. We knew that, when this tax was first introduced by Mr. Wilson and continued by Mr. Laing, and when it was abrogated by Sir Charles Trevelyan, and when it was again started, in a modified form, by Mr. Massey, it was regarded as a purely temporary tax, and that opinion had gained ground in other quarters. Well, in entertaining the hope that the tax might not necessarily be a permanent tax on the whole country of India, SIR HENRY DURAND ventured to base that hope on the following considerations. One was, that he saw no diminution in the credit of the Indian Government. He referred to a memorandum showing the market-value of Government securities from the 2nd of January to the 17th of November. That embraced a very considerable space of time, and it covered the time when the loan of March last was issued: it also necessarily covered the time when the deficit of four millions was announced; and he observed that, if comparison of prices were made at the date of the notification of the new loan in March last, and when the fact of the deficit of four millions was announced, on the 18th of March, the five-and-a-half, five and four per cent. stock were somewhat lower and duller than on the 17th of November. He knew that various causes might be ascribed to account for this. One was the present depression of trade, and the difficulty which money found for employment. Another was, he had no doubt, that the treasury had notified that it had no intention at present of opening a new loan. These were, doubtless, two elements for the stability of the funds; and a third reason was the frank and full manner in which His Excellency had at once and completely made known to the public the state of the finances. But there was another and deeper cause to account for the stability of the funds, namely, that the communities of the Presidency towns were entirely satisfied as to the solvency and financial soundness of the Government of India. Now, if he wanted to produce an instance of this, he had only to refer to a pamphlet, entitled "Indian Railways and Indian Finance," which had lately reached him, and which he believed to be written by one of the most eminent and able members of the Banking community of Bombay. With His Excellency's permission, he would read what the author said in one part:—

"The Finance Minister remarks that our progress, though on the whole considerable, is yet not such as would indicate any *rapid* development of those national resources on which the

State can rely. The remark suggests the question—What has been done for the development of our resources? It also leads us to reflect that, during the last nine years, commencing at a time when India had newly emerged from a period of anarchy and insecurity, our resources have been equal to meet a yearly increasing ordinary expenditure for civil administration, besides an extraordinary expenditure on permanent works alone, of sixty millions sterling. The deduction from this fact is that, during the last nine years, India having only emerged from a state of anarchy, and labouring under the drawbacks of defective communication, the want of irrigation and continued restrictions on her trade, has been yielding on the average of nine years an annual surplus of five to six millions sterling, instead of being afflicted with a chronic deficit according to the popular belief. That she suffers from the evil effects of this deception, both internally and externally, there can be no room for doubt. Well, then, if in spite of the difficulties mentioned, the sources of Indian revenue have been so productive, are we to expect that they will yield a less return when those difficulties shall have been removed? We may fairly, I think, expect that they will be more productive than they have yet been—without expecting too much, we may safely assume that they will be sufficiently productive to justify all the outlay on works of public utility which the circumstances of the country demand. Railways, if undertaken by Government on the principle proposed, would relieve the revenues from a heavy interest-charge as well as an indefinite liability for capital, and in a few years become themselves a source of revenue. Irrigation and canal works, it is generally allowed, should, under proper management, be scarcely less profitable. If it is admitted, then, that these two descriptions of undertakings will turn out to be as lucrative as stated, and that the finances are already producing a large annual surplus, we have also attained a position in which it would be sound policy to defray the cost of permanent non-productive works, in the first instance, by loans repayable after short periods by instalments from the revenue. I refer to such works as roads, barracks, fortifications and the reconstruction of the Indian Navy. These works are urgently needed for the country's safety, for the preservation of her trade and of those other works to which we have referred, through which her trade is developed. The policy of the Indian Government should be to afford every possible facility to the extension of trade and to devise means for the protection of property. For the latter purpose a considerable outlay is immediately required—so considerable an outlay that it would be unfair to charge it at once on the revenue; for, by so doing, we should neutralize the good effects which reproductive works are intended to produce—we should still cripple trade. Let the policy to be pursued be a fixed and decided policy, liberal but not lavish, and it will bring its own reward."

Now, it was the perception of this fact, *viz.*, the real financial soundness of our posture, on which SIR HENRY DURAND thought rested the satisfactory state of that which was always taken as the test of the credit of the Government; and when His Highness the Mahárájá of Jaypúr alluded, in the way he did, to what was called the alleged chronic deficit, he was right, and SIR HENRY DURAND entertained similar hopes himself. It was this confidence in our resources which was a main reason why he hoped that the Income Tax was a temporary measure and not of a permanent character; at least, not so with respect to the whole of India.

With regard to the unexpected deficit upon which much had been spoken and written, he had now before him an instance of discrepancy of accounts which he would like to be allowed to quote. He had before him the last report of the United States' Revenue Commissioner, in which there was a rather curious coincidence. He would ask to be permitted to read a passage from that Report, and he would do so to show that, however our Financial Department might have incurred the charge of inaccuracy, or rather that it did not more correctly foresee what had happened, yet these mistakes, if to be so termed, were not altogether unparalleled or unprecedented. After comparing the national receipts and expenditure of the current year, ending 30th June 1869, the Special Commissioner of Revenue of the United States said:—

"The estimates of total expenditure for the above period, as made by the Commissioner, are somewhat less than those presented by the Secretary, *viz.*, $326,300,000 (a reduction of about ten millions), and indicating a surplus of receipts over expenditures for the fiscal year ending 30th June 1869, according as one or the other of the above estimates is accepted, of from twenty to thirty millions."

That showed that, as between two such eminent financiers as Mr. D. A. Wells and Mr. Hugh McCulloch, there could be a difference in their calculations amounting to about two millions sterling of our money. That it was a difference as to amount of surplus did not affect the instance with regard to accuracy of accounts; accordingly the Commissioner remarks "and it is especially to be noted that the surplus actually attained during the last fiscal year, and the one predicted for the current year, are on the basis of a system of revenue-administration, which, to use a very mild expression, has been exceedingly imperfect."

Now, there was the case of one nation, and SIR HENRY DURAND could find many others besides, who found itself having these inaccuracies of account and seeking to amend its system. He did not say that that was any reason for not striving to arrive at perfect accuracy. He simply said that the thing was not unprecedented; and the circumstances of the British Government in India, which had to deal with several separate Governments and separate Administrations, were in some degree analogous to those of the United States, where were found discrepancies of account between very able financiers. There was therefore some excuse derivable from other empires for that which had happened in this.

With these remarks, SIR HENRY DURAND would vote for the passing of this Bill, guarding himself, as he had done, against the supposition that he thereby committed himself to look on it as a permanent measure.

But there was another point to which he would advert before concluding, because the conviction of the public and the Press as to the radically sound state of the financial position of the Government of India was combined with the feeling that the Government of India would receive, on the present occasion, the support of Her Majesty's Government even on the question of Military reductions which formed a momentous part of the financial measures submitted to Her Majesty's Government.

He would, with His Excellency's permission, state that, long before the deficit was known, and many months before—that was, when the Secretary of State was only aware of the small surplus of over £50,000 anticipated in last Budget—the Secretary of State had enjoined Military reduction, and had sketched out the points to which the attention of the Government of India should be called. He would also advert to the fact that the despatch of the Secretary of State had been under full consideration, and the measures recommended by the Government were mostly practically framed, though not submitted, long before the discovery of the deficit. Therefore it was not in consequence of any financial alarm that the chief part of these reductions had been submitted for the consideration of Her Majesty's Government. The recommendations were devised with reference to a systematic reduction of expenditure, before there was knowledge of anything more than that the amount of the surplus was very small, and that there was a necessity for a larger and a more trustworthy and permanent surplus. Under these circumstances, there could not be much doubt but that the public opinion to which he had adverted was correct, and that the Government of India would receive a very considerable amount of support from Her Majesty's Government with reference to the Military reductions proposed. He was also of opinion that the Government would be considered still more strongly entitled to the support that in all probability would be given, when it was mentioned that the reductions proposed to Her Majesty's Government involved no diminution of the real fighting strength of the British Army in India: they involved no weakening of our military position, and we should be as well able to cope with any events or contingencies as we were before. That fact therefore was one element which would be in favour of the Government at Home acceding to what had been submitted for their consideration. He therefore thought that the public were as right in their opinion that the Government of India would receive the support of Her Majesty's Government in the matter of Military reduction, as they were in their views as to the soundness and solvency of the Government from a general and comprehensive financial point of view.

The Hon'ble SIR RICHARD TEMPLE:—"Though unwilling to prolong anything like a discussion, yet there have been one or two financial points

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brought forward by my Hon'ble colleagues, which I can hardly leave without advertence.

"My Hon'ble colleague the Mahárájá of Jaypúr has stated that the Income Tax is and always has been "odious to the people." Now, with all deference to His Highness' authority on such a matter, I venture to say that the Income Tax may be odious to those few who have to pay it, but can hardly be so to the "*people*;" for the people do not pay it, and are not affected by it. For, of course, "people" meant either the mass, or the majority, or at least a large portion, of the population. Now one argument for this tax is, and always has been, that it does not touch the people at all, in the above sense. It only touches a limited class, about one in a thousand of the people.

"If it really touched the people and were odious to them, the case would be different; and we might hesitate to recommend the measure. The real point is, as well stated by Sir H. Durand, that we are not able to devise any mode so well calculated as the Income Tax to reach some of those richer classes of Natives who chiefly benefit by our rule.

"I am much obliged to my Hon'ble friend (Sir H. Durand) for adducing facts to show that India is not the only country where large discrepancies sometimes occur between estimates and actuals. As, however, advertence has been had to-day to the degree of foresight which the Financial Department exercised in respect to items where discrepancy occurred, I must say one word more. At the last sitting of the Council, I went through every discrepancy item by item. The Council can judge whether I am not right in affirming that more than two-thirds, that is the main portion, of the present difficulty arises from the depression of trade and the fall in the prices of opium. The question then is, had we, when the budget was framed in February last, any reason to foretell that trade would in the course of six or eight months become so depressed as it has become, or that the prices of opium would fall as they have fallen? I say that we had not. We did note some lesser circumstances affecting Customs, and therefore forebore to estimate for the increase which we should otherwise have assumed. We did fear, on general reasons of prudence, that there might be some fall in opium. But there was no actual fact nor any consideration whatever to lead us to estimate for a considerable decrease either in Customs or in opium. On the contrary, every fact available to us pointed to conclusions such as those embodied in the estimate."

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then moved that the following clause be added to section 2:—

"Whenever the additional duty leviable under the former part of this section in December 1869 is not deducted at the time of payment in that month from the pay, annuity or pension chargeable therewith, such additional duty shall be deducted from the pay, annuity or pension aforesaid at the time of payment in January 1870."

The Motion was put and agreed to.

The Hon'ble SIR RICHARD TEMPLE then moved that the Bill as amended be passed.

The motion was put and agreed to.

SALT (MADRAS AND BOMBAY) BILL.

The Hon'ble MR. STRACHEY asked leave to postpone the presentation of the report of the Select Committee on the Bill to enhance the price of salt in the Presidency of Fort Saint George and the duty on salt in the Presidency of Bombay.

Leave was granted.

The following Select Committees were named:—

On the Bill to provide rules for the manufacture, storing and sale of alimentary salt in the North-Western Provinces, the Panjáb, Oudh and the Central Provinces—the Hon'ble Sir Richard Temple, the Hon'ble Messrs. Cockerell, Gordon Forbes and Chapman and the Mover.

On the Bill to provide for the better regulation of Court fees—the Hon'ble Messrs. Strachey, Gordon Forbes, Cowie, Chapman and Bullen Smith and the Mover.

The Council adjourned to Friday the 3rd December 1869.

WHITLEY STOKES,

Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 26th November 1869.

Government Central Press.—No. 169 L D.—2 12-77.—60.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 3rd December 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey.

The Hon'ble F. S. Chapman.

The Hon'ble J. R. Bullen Smith.

His Highness Sarámade Rájáháe Hindústán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur, of Jaypúr, G. C. S. I.

QUARANTINE RULES BILL.

The Hon'ble MR. CHAPMAN moved for leave to introduce a Bill to provide rules relating to quarantine. He said that there could be no doubt that the Executive Government should have the power to enact and enforce rules of this description. Indeed the Penal Code, section 271, provided penalties for disobedience to quarantine rules made and promulgated executively by the Government; but the Advocates General at Madras and Fort William both entertained doubts whether, in the absence of a positive enactment, Government had the power to frame such rules. Hence the necessity for legislation.

The Motion was put and agreed to.

SALT (MADRAS AND BOMBAY) BILL.

The Hon'ble MR. STRACHEY presented the Report of the Select Committee on the Bill to enhance the price of salt in the Presidency of Fort Saint George and the duty on salt in the Presidency of Bombay.

ALIMENTARY SALT (N. W. P., &c.) BILL.

The Hon'ble MR. STRACHEY also presented the Report of the Select Committee on the Bill to provide rules for the manufacture, storing and sale of alimentary salt in the North-Western Provinces, the Panjáb, Oudh and the Central Provinces.

The Council then adjourned to Friday, the 10th December 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

CALCUTTA,
The 3rd December 1869.

Office Supdt. Govt. Printing.—No. 5503 L. C.—4-12-69.—180

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 10th December 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding*.

His Honour the Lieutenant Governor of Bengal.

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble Sir Richard Temple, K. C. S. I.

The Hon'ble F. R. Cockerell.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

His Highness Sarámade Rájáhée Hindústán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur, of Jaypúr, G. C. S. I.

SALT (MADRAS AND BOMBAY) BILL.

The Hon'ble MR. STRACHEY moved that the report of the Select Committee on the Bill to enhance the price of salt in the Presidency of Fort Saint George and the duty on salt in the Presidency of Bombay, be taken into consideration. He said, the objects of this Bill were so thoroughly well known to the Council that it was unnecessary to make any further remarks upon them. He would merely say that the Select Committee had made some slight alterations of which the only one of any importance was the following. Under section 44 of Act VI of 1844, power was given to the Governor General in Council, not to the Local Government, to reduce the duty on salt in Madras if it thought necessary. As this was a power which the Executive Government possessed in no other part of India, it seemed to the Committee that there was no use in preserving it. The effect of the alteration would be to put the whole of India in that respect on the same

footing. Section 45 of Act VI of 1844 provided a procedure in case of export of salt that had paid the full price, which procedure had for some years been disused. The Committee therefore proposed to repeal this section as obsolete.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

ALIMENTARY SALT (N. W. P., &c.) BILL.

The Hon'ble MR. STRACHEY also moved that the report of the Select Committee on the Bill to provide rules for the manufacture, storing and sale of alimentary salt in the North-Western Provinces, the Panjáb, Oudh and the Central Provinces, be taken into consideration. He said the Committee had made a slight addition to the Bill as introduced. The Acts now in force in the territories to which the Bill would apply provided for levying the duty of three rupees per maund on salt crossing the Customs-line. There was no provision for levying duty anywhere else than at the line. It would be necessary to levy it also at the salt-works which it was proposed to open, but this was not provided for in the Bill as originally framed. The defect was remedied in the Bill as amended. The Committee had inserted two sections, one providing for the levy of a duty not exceeding three rupees per maund on salt manufactured in the territories comprised in the Bill, the other empowering the Local Government to prescribe rules for the collection of such duty at such places as should seem fit. This had necessitated slight additions to the title and preamble.

The Motion was put and agreed to.

The Hon'ble MR. STRACHEY also moved that the Bill as amended be passed.

The Motion was put and agreed to.

EXPROPRIATION BILL.

The Hon'ble MR. STRACHEY also moved that the Bill to consolidate and amend the law for the acquisition of land needed for works of public utility be referred to a Select Committee with instructions to report in six weeks. He said that, when he introduced this very important Bill in March last, he stated that it was the desire of Government that it should be subjected to the greatest

possible amount of public criticism, and he said that it would not be right to proceed further with a Bill of this character until the Council had before it all the information that could be obtained, and had received the opinions of the Local Governments and authorities best calculated to form an opinion on the subject. In the eight or nine months that had since elapsed, a great number of valuable criticisms and opinions had been received from the various Local Governments and other authorities, and the papers containing them had been some time in the hands of all the members of this Council. He thought, therefore, that the Council was now in a position to proceed with the consideration of this measure. He need not repeat the reasons which led the Government of India originally to the conviction that legislation on this subject was necessary. Although there had been differences of opinion as to the remedies to be applied to the evil, there had been hardly any difference of opinion as to the necessity of amending the existing law. For several years past this had been the opinion of the majority of the Local Governments throughout India.

When MR. STRACHEY introduced the Bill, he gave some examples to show the way in which, under the operation of the existing law, the public had been, he might say, swindled, for he really could use no milder term. He might have laid stress with equal truth on the fact that a change in the law was also necessary for the protection of private property. There was no doubt, he believed, that in some parts of India, where unfortunately there were no checks of public opinion on the actions of Government officers, their zeal in what they thought the interests of Government had sometimes led to unjust interference with the rights of private property. He had good reason to know that this was a feeling which had been not uncommon among intelligent Natives of the country, and the Head of one Indian administration had, as the Council would see from the papers before it, declared his belief that a change in the law was necessary, not for the protection of the Government, but for the protection of the people, and he approved of the provisions of the present Bill for this reason, that it would give a far better protection to the rights of private property than that afforded by the existing law.

When the Government came to the conclusion that it was necessary to amend the law, it considered that the main evils of which complaint had been made arose from the fact that the existing law contained nothing whatever to show the principles on which the valuation of land taken up for public purposes ought to be regulated. In determining what these principles were to be, it seemed to the Government that it could not do better than base its legislation on the principles which had long been established and acted on in England. The Government thought there was little danger that, if we took the law

of England as our basis, it would fail in securing the just claims both of private property and of the public. Sections 46 and 47 of the Bill, which were the most important sections of the whole measure, contained those principles. He regretted that, when he introduced this Bill, through some forgetfulness which he could not now account for to himself, he omitted to explain—although it was one of the most important facts connected with the Bill—that it was the special desire and intention of the Government that the law and practice of England should, so far as those principles were concerned, be adopted in the Bill. If he had then made it clear that the principles of this measure were really identical with those obtaining in England, and with the law of all civilized European countries (for there was really, as far as he had been able to discover, little or no difference in this respect in the different countries in Europe), although it might have been argued that there were special reasons which made the law and practice of Europe unsuitable in this country, still there would hardly have arisen the supposition in any quarter that the principles of the Bill were contrary to the commonly received ideas of equity in respect of private rights of property. Mr. Strachey thought the Council would be satisfied that he had now given a correct description of the principles of the Bill when he said that they were those of the law and practice of England, when he quoted the remarks contained in a memorandum drawn up by the Secretary in the Legislative Department, which was issued under the special authority of Mr. Maine before he left. The Note said:

"The sections in question have been objected to as novel, harsh, unjust, and retrogressive. The object of this Note is to show that they are little but a statement, in a clear and compendious form, of the law prescribed by the English legislature, or laid down by the English Judges; and that, so far as they differ from English law, the difference may be said to be in favour of the person interested in the property."

He would now briefly state to the Council what these principles really were. Section 46 of the Bill declared that, in determining the amount of compensation to be awarded for property taken up for public purposes, the Judge, or the Judge and assessors, as the case might be, should take into consideration the market-price of the property, and the damage, if any, sustained by the person interested by reason of severing such property from his other property, or by reason of the acquisition injuriously affecting his other property in any other manner. With an exception which he would mention presently, these provisions were founded on the English Lands Clauses' Consolidation Act, section 63. Compensation would be given on account of every sort of actual injury caused by the acquisition of the property. Suppose (to quote some examples given by one of the critics of the Bill) that it was necessary to take up a tank

from which land was irrigated. Here, in addition to the actual value of the land occupied by the tank, the owner would also receive compensation for the loss sustained by the withdrawal of irrigation from the land previously irrigated by the tank. So, if a house were taken, the owner would get compensation for the expense of removing his furniture; and the provision for compensation for damages in respect of earnings would meet the case of the trader whose business was interrupted, or who was compelled to seek premises with a less advantageous position. In the last respect, regarding compensation for the loss of earnings, the Bill dealt decidedly more liberally with private interests than the English law; for mere obstruction or inconvenience to trade was not now regarded by the English law as supporting a claim for compensation. MR. STRACHEY might mention here that it had been suggested, and he thought rightly, that the intention of the first clause of this section would be better expressed if, instead of saying that the price should be taken into consideration which the property would fetch by public auction, it were laid down that the price to be taken into consideration was the market-value of the property. The auction-value, it had been said, and he thought truly, might be a very uncertain criterion of the value of immoveable property. The intention of the section was to prescribe that the best means should be adopted to ascertain the actual market-value of the property.

The next section of the Bill (47) enumerated the matters which were not to be taken into consideration in determining the compensation to be made. The first of these was the degree of urgency which had led to the acquisition. This was so obviously consistent with common sense that it was hardly necessary to have said anything about it in the Bill. Regarding the second matter he would speak presently. The third matter was that the officers were not to take into consideration any damage sustained by the proprietor, which, if caused by a private person, would not render such person liable to suit. The object of this provision was to exclude vexatious claims which might be made on account of trifling inconveniences caused during the progress of the works. This was in accordance with the ruling of the English Courts, to the effect that, unless something was done which would be actionable if done by a private person, there was no right to claim compensation. MR. STRACHEY did not think there had been, or could be, any difference of opinion regarding that principle. The fourth principle was that the valuers were not to take into consideration any damage which, after the time of awarding compensation, was likely to be caused by or in consequence of the execution of the proposed work. This also, as the Note of the Legislative Department would show the Council,

was in accordance with a ruling of three distinguished English Judges, to the effect that the jury had no right to assess prospective or future damages caused by a work, since the extent of damages could not be ascertained till after the damage had been actually inflicted. There had been some misunderstanding in some quarters regarding the effect of this provision. As the Bill was drawn, any person interested in the property might at any future time recover, by suit, compensation for any damage which could not be foreseen when the property was taken. All that was intended was that, in fixing the value at the time of taking the property, the official valuers should not take into consideration purely speculative or imaginary damages. The fifth and sixth provisions were taken from the French law. They were obviously equitable, and as he was not aware that they had been objected to, he would not say anything about them.

The only question of real difficulty that arose under this section was under the second clause, which provided that the valuers should not take into consideration any disinclination of the person interested to part with the property acquired. Regarding this part of the question there was more doubt and difficulty than regarding any other part of the Bill. There was a common, and he thought natural, feeling that, in many cases, when land was taken up for public purposes, something more than the fair market-value of the land ought to be given. For example, the case had been put of a Muhammadan community compelled to give up a cemetery in which their fathers were buried, or of an agricultural proprietor compelled against his will to part with his ancestral land. It was commonly felt to be a hardship that, in such cases as these, nothing should be given beyond the mere market-value of the land. It seemed to MR. STRACHEY that two questions which were really separate questions had been mixed up in the discussions that had taken place on this subject. As far as the mere question of value was concerned, with which alone this Bill as it stood had attempted to deal, it seemed to him that there could be no question that it was quite impossible to take into consideration the unwillingness of the owner to part with his property; and as the Council would see from the Note of the Legislative Department which he had already referred to, this was in accordance with the English practice.

"It is obvious," the Note said, "that to allow so vague and inappreciable an element as personal feeling or unwillingness to be taken into consideration in fixing the value would render it impossible to come to any satisfactory conclusion. One of the critics of the Bill puts the case of a Christian or Mussulman being compelled to part with the tombs of his people, and asks 'shall property hallowed to the owner by similarly sacred associations be valued at so many annas and pie per square foot like ordinary arable land?'"

The Note went on to say that this very question of the proper mode of assessing a churchyard had actually arisen in England in a case in which Chief-Justice Lord Truro laid down the following dictum:

"'That the value was to be ascertained in relation to the situation of the property generally, and its applicability to ordinary purposes, discharged of any prescribed appropriation.' In England, again, the question has been raised as to whether compensation should be given for destroying a picturesque effect, or interfering with a sentimental association, such as that attached to a ruin. The Companies have always refused to recognise claims on such grounds, and it is scarcely necessary to say that no one has ever ventured to bring such a claim into Court. No compensation is obtainable in England for annoyance to the amenities of a claimant's property, or for mere personal inconvenience."

That this was right, MR. STRACHEY thought quite clear; but, although in making an estimate of the actual value of property such considerations must be rejected, the question was much more difficult whether, after the actual market-value of the property had been determined, some compensation ought not also to be made to the owner on account of the compulsion to which he had been forced to submit, and this, as the Council would perceive, was really a different question from that of the value of the property itself. The case had been put with extreme clearness by His Honour the Lieutenant Governor in the very valuable remarks which had been submitted by his Government on the Bill, and which were now in the hands of the Council.

"The only doubt," it was said, "that can, in His Honour's opinion, be reasonably entertained is, whether a person, in consideration that he is forced to sell his property, should not receive something *in excess of the value of it.* But it could not properly be left to the discretion of a Court to determine what that something should be. The only issue that can properly be put before the Court and assessors is, what *is* the market-value of the property. They cannot be properly asked whether the special circumstances of each case require that something, and, if something, how much, in addition to the value, shall be given. But the law may require that a fixed percentage above the ascertained value shall in all cases be given, if the legislature sees fit to say so. It is certain that any such concession can only be made in the form of a fixed proportion on the value of the property. Government could not undertake to gauge, nor could it prudently delegate to any Court a discretion to gauge, the particular degree of hardship which may be entailed in such a case as that of the owner of a property being forced to sell it at a time when he might think it (and when it might really be) more prudent to retain it.

"Much may be said in favour of allowing something beyond the actual market-value to persons who are summarily compelled to part with their property for the common good. Something also against it may be said in the interest of the general community out of whose pockets payment for the property has to be made. The Lieutenant Governor will not at present attempt to strike the balance, but will content himself with suggesting the point for the consideration of the Government of India."

Although His Honour the Lieutenant Governor had thus refrained from expressing any final opinion on this point, MR. STRACHEY thought it might be presumed from the terms in which His Honour had written that he was on the whole in favour of allowing a fixed percentage, in addition to the actual value of the property, in consideration of the compulsion to which the owner had been subjected. This was also in general accordance with the view taken by the Government of the Panjáb. It had also been expressed by the Chief Commissioner of Oudh, who, while he gave a decided opinion that it was impossible to take into consideration matters such as these in making a valuation of the property, still thought that some separate compensation ought to be made for the compulsion to which the owner was subjected. Although the Statute-law of England was silent on the subject, MR. STRACHEY understood that it had been the common practice in England to give on this account same percentage over and above the actual value of the property. He understood that some years ago it was not uncommon on this account to give as much as twenty-five per cent., and that, although of late years the allowance had very much diminished, something was still very commonly given. He believed that, under the law of other civilized countries of Europe, no such allowance for compensation could be made. Although he had himself come to a different conclusion, he could not deny that there was great weight in the arguments of those who said that no such compensation on account of compulsory sale ought to be made. He might quote to the Council a passage from a valuable criticism on the Bill in which this view was taken, and he quoted it specially because he had been informed that it was also the view of a very high authority, whose opinion would be received with the greatest respect by the Council,—he meant Mr. Turner, one of the Judges of the High Court of the North-Western Provinces.

"The principle on which the disinclination of the proprietor to part with his property is to be recognized, in the computation of the compensation to be awarded him, is somewhat incompatible with the paramount right of the State, and it is a principle obviously extremely difficult of application. Any uniform percentage would be, if considerable, most unjust to the State,—that is to say, to the whole tax-paying public. It is quite possible to conceive cases in which owners have no disinclination to part with their property. Yet if the right to compensation for disinclination be conceded, it is to expect them to be more than human if they do not simulate reluctance and claim compensation beyond the actual value of their property. If it is just that compensation for disinclination to sell is to be awarded, it should be proportionate to the disinclination. How is this to be ascertained, and how is it to be valued? There are many persons who would make extravagant sacrifices to acquire or retain property to which from some sentimental reason they are attached. These persons can never receive an adequate compensation for the deprivation of such property. In our opinion this sentimental damage ought to be put out of the computation entirely. If the owner receives the full value of his property, he receives all that he can in justice claim from the State. He must be taken to

know that he held his property subject to the paramount right of the State, and, that being so if he gets its full market-value, he gets all that in fairness the State should be required to pay. Nor would this be the only instance in which the law refused compensation for sentimental damage. If A's coachman, by unskilful driving, runs into and destroys B's favourite charger, B recovers only the actual value of his charger, although he would not have sold it for any sum of money. If a Railway Company negligently loses A's portmanteau containing a watch which, from some particular circumstance, A values beyond price, all that A could recover would be the actual market-value of his watch. Why should the case be otherwise when the State exercises a right to which it is unquestionably entitled."

Although MR. STRACHEY could not deny that there was much weight in this reasoning, his own feeling was in favour of the other view, which he understood to be that of His Honour the Lieutenant Governor. In saying this, however, he desired to make it clear that this was his purely personal opinion, and that he was in no way committing the Government at large to any opinion on the subject. He thought himself that it would be proper to allow something over and above the market-value of the land, in consideration of the compulsory character of the sale. He admitted that it would be extremely difficult—he might say impossible—to make rules which really should apply equitably to all cases, and there was no doubt that there would be many cases where there was really no necessity for giving anything beyond the bare market-value; still, he did think that there was a foundation of equity and also of expediency in the feeling that this was not always enough. And he thought that, whether this feeling was in itself strictly reasonable or not, it was a feeling so common, and, indeed, so universal, that it could not properly be ignored in framing a practical measure of legislation. Injury to property might be not the less real, although it was only a sentimental injury; nor did he think that it was true that even a sentimental injury might not, to a certain extent, be compensated by the payment of money. He would say no more on this part of the subject now. It was a question which would require careful consideration by the Select Committee, and it was one which would rest with the Council at large hereafter finally to decide.

He had now, he thought, said enough regarding the main principles of the Bill. He need not refer in detail to the opinions received from the Local Governments and other authorities, because the papers that had been received from them were before the Council. Excepting the Government of the North-Western Provinces, which would prefer to lay down no rules regarding the principles on which compensation ought to be paid, the Council would see that, generally speaking, the Local Governments had approved of the substan-

tive portion of the Bill. He would only quote further an opinion which was not before the Council, but which had been given by the eminent Judge to whom MR. STRACHEY had already referred. He had stated his concurrence with the opinion expressed by one of the critics of the Bill, to the effect that, "so far as the principles of this Bill are concerned, the measure has been framed in a manner which will earn the concurrence of all jurists, and that, if accepted by the Council, it will be not the least valuable chapter in the codified law of India." MR. STRACHEY quoted this opinion with the less hesitation, because his own personal share in the preparation of this Bill had really been of very secondary importance.

It only now remained for him to say a few words regarding the procedure by which the Bill proposed to carry these principles into effect. It was proposed in the first place that the Collector should cause the land to be marked out and measured. He would then give notice to all persons interested in the property to state the nature of their interests and their claim to compensation. He would then enquire summarily into the value of the property and estimate the market-value. If the parties accepted the offer of the Collector, the matter would be disposed of; but if the parties objected to his valuation, the matter would be referred to the determination of a Judge, with or without the help of assessors, as the owners of the property might desire. If the Judge and the majority of the assessors agreed in their valuation, their decision would be final. If they differed in opinion, an appeal would lie to the High Court from the decision of the Judge. The Council would see from the papers that were before it, that the Local Governments and other authorities consulted were, generally speaking, entirely in favour of some such tribunal as that proposed in the Bill; but very many valuable suggestions had been made, the adoption of which he hoped would tend greatly to simplify and improve the procedure proposed by the Bill. He need not trouble the Council with details in regard to these points, because he thought the whole subject of the procedure to be followed would require to be considered carefully by the Select Committee, and that it was desirable that the Council should first have before it the result of the discussions in the Select Committee. He might add that he hoped that long before the Committee was in a position to report on this subject, we should have the great advantage of being joined by Mr. Stephen, whose opinions on such a subject as this would necessarily have great weight with the Council.

In conclusion, MR. STRACHEY only wished to repeat what he said when he introduced the Bill, that this measure, being one in which the interests of the public were closely concerned, and in which the Government had really no

interest whatever apart from those of the public, which had to be reconciled to the utmost extent possible with consideration for the just rights of private property, he hoped that the non-official members of the Council would agree to serve on the Committee, and give to the Council the advantage of their opinion on the important questions which would come under discussion.

His Honour the Lieutenant Governor wished to make a few remarks after what had fallen from the Hon'ble Mover of the Bill. Mr. Strachey had rightly understood that His Honour was, on the whole, in favour of giving some compensation on land taken up for public purposes in excess of the actual market-value. His Honour thought that, on the whole, it was in accordance with the general sense of justice to make such payments; and, having heard what the Hon'ble Mr. Strachey had said against that view, His Honour must say that it had not at all tended to weaken the feeling he had in favour of giving something in excess of the market-value; for there did not appear to him to be a very perfect analogy between the cases stated by the Hon'ble Mr. Strachey and the payment of compensation for the acquisition of land for public purposes. With every deference to the authority cited by Mr. Strachey, it did not appear to His Honour that there was a perfect analogy between the two cases. In the case of the watch, the owner was deprived of his property through the effects of an accident, and it would surely offend every one's sense of justice if the person who was the cause of that accident were made to pay largely in excess of the value of the property. In the cases we were considering, the circumstances were entirely different. The hypothesis was, that the land required would contribute to the benefit of the people, and often to its very material benefit; and that being so, there did not seem to be anything very unreasonable that the proprietor should have a small bonus in excess of the actual market-value of the property. As His Honour said before, he thought that the general feeling was strongly in favour of that view, and that alone was a strong argument in favour of it; because, in a matter of this sort, in which the public was concerned on both sides, His Honour thought public feeling, so far as it did not go beyond reason, ought to have great weight in determining the question.

The Motion was put and agreed to.

QUARANTINE RULES BILL.

The Hon'ble Mr. Chapman introduced the Bill to provide rules relating to quarantine, and moved that it be referred to a Select Committee with instructions to report in a month. He said, this Bill was in itself a very simple

one and was entirely in harmony with the Penal Code. The framers of that Code contemplated the existence of rules of this description, and imposed penalties for their non-observance. He had, therefore, in the Bill, literally adhered to the terms and language of the Code, and had not attempted to define the particular acts which would constitute a breach of quarantine rules. Another reason for adopting this course had been the difficulty, in a general law of this kind, of meeting the requirements of the different parts of India, and of anticipating the conditions under which the Executive Governments might be called on to take action in the matter. He made these remarks because he thought that the practice of substituting rules for fixed law was objectionable, and should not be resorted to where it could be avoided.

He had said that the Bill was a simple one; but he could not disguise the fact that, unless the working of the rules was very carefully superintended, they might be the means of entailing considerable hardship and even oppression. The rules framed by the different Local Governments, and approved of by the Government of India, would, no doubt, be wise and proper; but everything would depend on the way those rules were worked. For example, the rules would probably provide that if a ship arrived from a port where cholera prevailed, it should be subjected to restrictions in its intercourse with the shore; but to place in quarantine every vessel that arrived in Bombay or Calcutta, where cholera was endemic, would entail a great deal of hardship. He would therefore hope that those uncompromising officers, the Sanitary Commissioners, would be very carefully looked after in their application of the rules laid down.

The Council would observe that the Bill contemplated the framing of maritime as well as inland rules. With regard to the maritime rules, it would probably be sufficient to limit their operation to the ports of Calcutta, Madras, Bombay and Karáchi. With respect to the inland rules, MR. CHAPMAN anticipated the greatest benefit from their operation, provided they were carefully framed and judiciously carried out. In many parts of India, it was the practice for a large number of pilgrims to congregate at sacred shrines, and the consequence very frequently was that cholera in its most virulent form broke out, and the disease thus germinated was disseminated throughout the country by the people on their return to their homes. Any measure that should have the effect of checking this great evil, must be regarded as a great blessing.

The Motion was put and agreed to.

HINDÚ WILLS BILL.

The Hon'ble MR. COCKERELL introduced the Bill to regulate the Wills of Hindús and Buddhists in the Presidency Towns, and moved that it be referred

to a Select Committee with instructions to report in a month. He said that this Bill, together with a Statement of Objects and Reasons containing a very full explanation of the policy and details of the proposed legislation, were published under the signature of our late learned colleague, Mr. Maine, in the *Gazette of India* of the 25th September last.

It was therein shown that the propriety of extending the testamentary portion of the Indian Succession Act to the classes heretofore excepted from its operation had for a long time past been under the consideration of the Government of India, that public opinion—Native as well as European—as to the expediency of this extension had been widely canvassed, and that the result was a general consensus of approval of the measure, subject to such reservations as were contained in the Bill.

MR. COCKERELL thought it was unnecessary for him on the present occasion to enter into any recapitulation, either of the reasons for the application of this measure to the wills of Hindús and Buddhists, or of the considerations which had led to the omission from the Bill of certain provisions of the Indian Succession Act regarding the interpretation of wills, and the powers, duties and liabilities of executors or administrators, all of which were so clearly set forth in the statement above referred to.

The only objections which had been raised to legislation for the regulation of wills made by Natives were due to a misconception of the extent to which it was proposed to apply, in the case of such wills, the provisions of the Indian Succession Act. It was apprehended that the projected measure would operate to set aside or overrule the injunctions of the Hindú and Muhammadan laws as to the devolution of property; and if the provisions of section 46 of the Succession Act, which declared that "every person of sound mind and not a minor may dispose of his property by will," were adopted without qualification, that apprehension would be justified; but the Bill, accepting the principle established by several rulings of the Courts, that the right of the Hindú to direct the disposal of his property after his decease was co-extensive with his power of alienation thereof *inter vivos*, provided a similar limitation to his testamentary capacity.

In applying the rules regarding the interpretation of wills to the wills of Hindús and Buddhists, the Bill aimed at a close adherence to the expressed or implied intentions of the testator, and excluded those provisions of the Succession Act which might be said to supplement the directions of the person making the bequest, or which were unsuitable as foreign to the social condition of the Natives of this country.

It had been assumed that the practice of testation amongst Hindús had sprung up under British administration and was wholly unknown to them in a former period. This conclusion was perhaps doubtful, as there was some evidence to the contrary; but it was certain that the Hindú, unlike the Muhammadan, law contained no express definition of testamentary powers or directions as to the discharge of the duties entailed by a will.

The provisions of the Bill, therefore, for the regulation of wills made by Hindús, were absolutely needed to supply the deficiencies of the existing law; but as there was not the same exigency in regard to Muhammadans, and as the extension to their wills of any but the rules as to the mode of execution would be open to grave objections, it was proposed to continue their present exemption.

So much of the testamentary provisions of the Indian Succession Act as related to void bequests had been omitted. They included what was termed the rule against perpetuities, and the provisions as to bequests of the testator's property for religious or charitable objects, to the exclusion of his near relations. As regarded the bequests just mentioned, it might be admitted, on the one hand, that there was little analogy between the circumstances which dictated the policy of the restriction imposed by the English law, and those of the Hindú testator; and, on the other, the bestowal of his property, in certain contingencies, for religious or charitable purposes was regarded by the Hindú as a sacred duty, to which it would be impolitic to apply any legal limitation.

In regard to the creation of perpetuities, the case was different: here, no religious duty or sanction of ancient custom presented itself in conflict with the sound policy of the English law in this matter, and it appeared to Mr. Cockerell that the considerations on which that policy was founded applied with even greater force to this country, where rights of inheritance formed such a fruitful source of litigation.

The application of the English rule was objected to by the Natives as interfering with a valued usage. It was urged that one of the most fondly cherished ideas in the mind of the Native of this country was the perpetuation of his name. The creation of perpetuities in this country, however, could only be coeval with the exercise of the power of testation, and the one derived no more authority from the provisions of the Hindú law than the other.

Mr. Cockerell was very strongly of opinion that the mere prejudice in favour of a weakly supported custom should not be permitted to stand

in the way of a substantial reform, and he trusted that the question would be considered when the Bill went into Committee, with a view to the introduction of the restriction of the English law.

The operation of the Bill was limited to the Presidency Towns, on the the assumption that, as yet, the testamentary power was rarely exercised by Hindús beyond those limits. He ventured to doubt the correctness of this conclusion; there was good reason to believe that, amongst the Hindú population, the practice of making wills was largely on the increase, especially in those parts of the Lower Provinces in which the doctrines of the *Dáyabhága* prevailed. This was indeed only the natural result of the ruling of our Courts, that the Hindú's right of disposing of his property by will was commensurate with his power of alienating such property during his life; for, as the Council were aware, the *Dáyabhága* conceded an absolute power of alienation, *inter vivos*, of property of every description.

MR. COCKERELL was indebted to the Registrar General of Assurances in Lower Bengal for some very valuable statistics in regard to the registration of wills.

These statistics showed a very considerable progressive increase of registration of these instruments year by year, and it was specially noticeable that the vast majority of these registered wills were executed by Hindús.

The Council would bear in mind that the registration of wills was not compulsory under the present law, and it was probable, therefore, that the number of wills registered represented only a moderate proportion of the wills executed. It was reasonable to assume, in the absence of circumstances suggestive of any other conclusion, that the considerable increase of registration of wills indicated a proportionate tendency to increase in the number of such instruments executed; and if this were so, there could be no reason for withholding the extension of the rules for the regulation of wills to places beyond the limits of the Presidency Towns; for the Bill asserted the principle that, where the practice of testation prevailed, the restraints upon its improper application, which were provided by the English law, were clearly needed.

The Bill would not go too far in his (MR. COCKERELL'S) opinion, if it extended to the Bengálí districts, or even to the whole of the Lower Provinces of Bengal, and he trusted that the propriety of such extension would meet with the consideration of the Select Committee. If nothing more was deemed advisable, at least a power of extending the Bill to Lower Bengal, and perhaps

to other provinces as circumstances might render expedient, might unobjectionably be vested in the Local Government.

The provisions of the Indian Succession Act in regard to the administration of the property of deceased persons in cases of intestacy had necessarily been excluded from the Bill, as they comprehended rights of inheritance, *ab intestato*, repugnant to the Hindú law; but he thought that the time had arrived for making some advance in our existing legislation on this subject.

Under the present law all that could be obtained by the representative of a person who had died intestate, was a certificate of administration of so much of the estate of the deceased as was comprised in the debts due to the deceased person at the time of his death. Practically, however, in many cases, this certificate, though legally valid only for the purpose of collecting debts, operated to confer on the person obtaining it an undisputed right of administering the entire estate of the deceased.

It seemed to MR. COCKERELL that so much of the Succession Act as regulated the duties and responsibilities of administrators might, without impropriety, be applied to the administration of the estates of Hindús and Buddhists in cases of intestacy; and that the grant of letters of administration should in such cases follow the interest, it being made incumbent upon the person claiming the grant to prove himself to the Court's satisfaction to be the legal representative of the deceased and entitled to succeed according to the Hindú law.

Amongst the beneficial results to be expected from enacting this measure, he looked to the eventual enforcement of an authority to adopt being made in writing. When the advantages of the suppression of nuncupative wills became generally recognized, the validity of an oral authority to adopt could hardly be maintained.

An authority to adopt was equivalent to a testamentary disposition of property, and the one obviously required the same safeguard against fraud as the other. MR. COCKERELL believed that the present state of the law in regard to adoption afforded great temptation and facility for fraudulent practices.

The Hindú childless widow had only to set up a fictitious oral authority given to her by her husband to adopt, and she was thereby enabled to divert the reversionary interest in the deceased's property from his relations to her own. It was to be apprehended that frauds of this description were not of very rare occurrence, and as, in such cases, the devolution of the deceased person's entire

property of every description was affected by the transaction, the measure of the evil engendered by the present system was even greater than in the case of nuncupative wills.

The Motion was put and agreed to.

The following Select Committees were named :—

On the Bill to consolidate and amend the law for the acquisition of land needed for works of public utility—His Excellency the Commander-in-Chief, the Hon'ble Messrs. Taylor, Cockerell, Gordon Forbes and Cowie, Colonel the Hon'ble R. Strachey, the Hon'ble Messrs. Chapman and Bullen Smith and the Mover.

On the Bill to provide rules relating to quarantine—The Hon'ble Messrs. Cockerell, Gordon Forbes, Cowie and Bullen Smith and the Mover.

On the Bill to regulate the Wills of Hindús and Buddhists in the Presidency Towns—The Hon'ble Mr. Taylor, Major General the Hon'ble Sir H. M. Durand, the Hon'ble Messrs. Gordon Forbes and Chapman and the Mover.

The Council adjourned to Friday, the 17th December 1869.

WHITLEY STOKES,
Secy. to the Council of the Governor General for making Laws and Regulations.

CALCUTTA,
The 10*th December* 1869.

Office Supdt. Govt. Printing.—No. 5713 L. C.—17-12-69.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 17th December 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding*.
His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.
The Hon'ble G. Noble Taylor.
Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.
The Hon'ble John Strachey.
The Hon'ble Sir Richard Temple, K. C. S. I.
The Hon'ble J. Fitzjames Stephen.
The Hon'ble F. R. Cockerell.
The Hon'ble Gordon S. Forbes.
The Hon'ble D. Cowie.
Colonel the Hon'ble R. Strachey, C. S. I.
The Hon'ble Francis Steuart Chapman.
The Hon'ble J. R. Bullen Smith.
His Highness Sarámade Rájáhée Hindústán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Babádur, of Jaypúr, G. C. S. I.

SUBORDINATE JUDGES AND MUNSIFS' BILL.

The Hon'ble MR. COCKERELL, in moving for leave to introduce a Bill to provide for the appointment of additional Subordinate Judges and Munsifs in the Presidency of Fort William, said that the present constitution of the offices of Subordinate Judge and Munsif within the territories under the government of the Lieutenant Governors of Bengal and the North-Western Provinces was derived from Act XVI of 1868. By the fifth section of that enactment the Local Government was empowered to appoint a fit person to either of those offices *whenever such office became vacant*. The power of appointment was thus, by implication, limited to the filling up of a vacancy in an existing office.

Recently, an Act had been passed by the Council of the Lieutenant Governor of Bengal, by which the adjudication of suits instituted in the Lower Provinces of Bengal between landlord and tenant, and heretofore cognizable

under Act X of 1859 by the Revenue Courts only, was transferred to the Civil Courts. The increase of work which would, by the operation of the new law, be thrown on these Courts, necessitated some addition to their present strength in those districts in which the institution of rent-suits was excessive; and it was accordingly proposed to appoint a few additional Munsifs. As the cost of this increase of Munsifs would be met by a corresponding reduction in the number of Deputy Collectors now employed in the trial of rent-suits, no extra expenditure would be incurred by the State on account of this measure.

The immediate object of the proposed legislation was the removal of the present legal disability of the Lieutenant Governor of Bengal to increase the number of Munsifs' Courts at present established in the territories under his government; but, as the necessity might arise for making some addition to the existing number of Munsifs or Subordinate Judges in the North-Western Provinces, or for the appointment of additional Subordinate Judges in Lower Bengal, it was thought advisable to make adequate provision for such a contingency in the present Bill.

The Motion was put and agreed to.

HIGH COURTS' (COSTS OF PETITIONS) BILL.

The Hon'ble Mr. Chapman, in moving for leave to introduce a Bill to enable the High Courts at the Presidency Towns to deal with costs of petitions for certain monies transferred to Government, said that this Bill was intended to supply an obvious defect in the existing law. It appeared that, under Act XXV of 1866, section 4, and Act XXIV of 1867, section 60, any one could now, without fear of consequences, advance claims, however frivolous and unfounded, for monies transferred to Government by the High Courts or the Administrator General. One case in particular had lately occurred in which much valuable time was wasted by a claim of this description. The Bill would empower the Courts to make such claimants pay the costs of the proceedings.

The Motion was put and agreed to.

ACT VIII OF 1863 AMENDMENT BILL.

The Hon'ble Mr. Chapman, in moving for leave to introduce a Bill to correct a clerical error in Act No. VIII of 1863, said that section 2 of that Act contained the following provision:—

"Officers in charge of Jails within the British Territories in India shall be competent to give effect to any sentence which shall be passed by any Court or Tribunal acting under the

thority of Her Majesty, or of the Government of India, or of any Local Government, although such Court be *not* situate in a place not subject to the general Regulations."

The last clause should of course be "although such Court be situate in a place not subject to the general Regulations."

It was unnecessary to refer such a Bill to a Select Committee. MR. CHAPMAN therefore proposed, at the next Meeting of the Council, to apply for the suspension of the Rules for the Conduct of Business, in order that the Bill might be passed at once. The Bill meanwhile would be circulated to Hon'ble Members.

The Motion was put and agreed to.

INDIAN CONTRACT BILL.

The Hon'ble MR. STEPHEN moved that the Hon'ble Messrs. Gordon Forbes and Chapman be added to the Select Committee on the Bill to define and amend the law relating to Contracts, Sale of Moveables, Indemnity and Guarantee, Bailment, Agency and Partnership.

The Motion was put and agreed to.

The Council then adjourned to Friday, the 31st December 1869.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

CALCUTTA,
The 17*th December* 1869.

Office Supdt. Govt. Printing.—No. 5919 L. C.—20.12.69.—180.

Abstract of the Proceedings of the Council of the Governor General of India, assembled for the purpose of making Laws and Regulations under the provisions of the Act of Parliament 24 & 25 Vic., cap. 67.

The Council met at Government House on Friday, the 31st December 1869.

PRESENT:

His Excellency the Viceroy and Governor General of India, K. P., G. C. S. I., *presiding.*

His Excellency the Commander-in-Chief, K. C. B., G. C. S. I.

The Hon'ble G. Noble Taylor.

Major General the Hon'ble Sir H. M. Durand, C. B., K. C. S. I.

The Hon'ble John Strachey.

The Hon'ble J. Fitzjames Stephen, Q. C.

The Hon'ble F. R. Cockerell.

The Hon'ble Gordon S. Forbes.

The Hon'ble D. Cowie.

Colonel the Hon'ble R. Strachey, C. S. I.

The Hon'ble Francis Steuart Chapman.

The Hon'ble J. R. Bullen Smith.

His Highness Sarámade Rájáháe Hindústán Ráj Rájendra Srí Mahárájá Dhiráj Siváí Rám Singh Bahádur, of Jaypúr, G. C. S. I.

SUBORDINATE JUDGES AND MUNSIFS' BILL.

The Hon'ble MR. COCKERELL introduced the Bill to provide for the appointment of additional Subordinate Judges and Munsifs in the Presidency of Fort William, and moved that it be referred to a Select Committee with instructions to report in a fortnight. He said that the effect of the Bill becoming law would be to remove the restriction which, as had been explained when the subject was last before the Council, now attached to the power of appointing any person to the office of Subordinate Judge or Munsif under Act XVI of 1868.

The provisions of that Act, in regard to the manner in which persons were to be appointed to either of those offices, the qualifications to be possessed by, and the duties and obligations of, the persons so appointed, were extended to all appointments made under the power conferred by this Bill on the Local Governments of the Lower Provinces and the North-West Provinces of the Presidency of Fort William.

Further, whilst it accorded free scope to the action of the two Local Governments in the determination of the persons to be appointed to the office of Subordinate Judge or Munsif, the Bill, on financial grounds, provided for the reservation to the Governor General in Council of full control as to the number of such offices to be established under either Local Government.

The Motion was put and agreed to.

KULLU SUB-DIVISION (PANJÁB) BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to invest the Assistant Commissioner of the Kullu Sub-division in the Panjáb with certain appellate powers, said that the annual snowfall in the Babbu Pass rendered the hilly parganas of Kullu, Seoráj, Lahoul and Spiti completely inaccessible during some months of the year. The consequence was that appeals from decisions passed in those districts, which, as the law stood, lay to the Deputy Commissioner of Kangra, could not be instituted during the winter, and in summer the appellant had to take a journey varying from ten to twenty days. The right of appeal was thus practically denied to the bulk of the inhabitants. It was proposed to remedy this state of things by investing the Assistant Commissioner of the Kullu Sub-division with the power of hearing such appeals.

The Motion was put and agreed to.

ACT VIII OF 1863 AMENDMENT BILL.

The Hon'ble MR. CHAPMAN introduced the Bill to correct a clerical error in Act No. VIII of 1863. He said, the error which it was the object of this Bill to correct was in the accidental insertion of two 'nots' instead of one. There could be no question of the expediency of expunging one of those unfortunate monosyllables.

The Hon'ble MR. CHAPMAN having applied to His Excellency the President to suspend the Rules for the Conduct of Business,

The President declared the Rules suspended.

The Hon'ble MR. CHAPMAN then moved that the Bill be taken into consideration.

The Motion was put and agreed to.

The Hon'ble MR. CHAPMAN then moved that the Bill be passed.

The Motion was put and agreed to.

AGROR VALLEY BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to remove the Agror Valley from the jurisdiction of the tribunals established under the general Regulations and Acts, said that His Excellency the President would recollect that, some months since, by an Ordinance passed under the authority conferred by the Indian Councils' Act, the Agror Valley was removed from the jurisdiction of the ordinary tribunals and subjected to special powers vested in the Lieutenant Governor of the Panjáb. The reasons for doing so were fully considered at the time, and there was no doubt that the peculiar circumstances of the place fully justified the adoption of such a measure. The effect of this Bill would be to convert the Ordinance into an Act. Legislation was needed, because, under a provision in the Indian Councils' Act, an Ordinance would expire six months after the date of its promulgation.

The Motion was put and agreed to.

JAIL DISCIPLINE, NON-REGULATION PROVINCES' BILL.

The Hon'ble MR. STEPHEN, in moving for leave to introduce a Bill to provide for the maintenance of jail discipline in the Non-Regulation Provinces, said that the law regarding jail discipline in the Non-Regulation Provinces (other than those under the government of His Honour the Lieutenant Governor of Bengal) was at present in an unsettled state; this had occasioned inconvenience in the Panjáb. The object of the Bill was to provide for the maintenance of jail discipline in the Non-Regulation Provinces to which he had referred.

The Motion was put and agreed to.

The following Select Committee was named:—

On the Bill to provide for the appointment of additional Subordinate Judges and Munsifs in the Presidency of Fort William,—The Hon'ble Messrs. Stephen, Gordon Forbes and Chapman and the Mover.

The Council adjourned to Friday, the 7th January 1870.

WHITLEY STOKES,
Secy. to the Council of the Govr. Genl. for making Laws and Regulations.

CALCUTTA,
The 31*st December* 1869.

Office Supdt. Govt. Printing.—No. 6332 L. C.—5-1-70.—150.